



**AGENDA
CITY COUNCIL MEETING
JANUARY 13, 2026**

1371 WEST FM 550 - McLendon-Chisholm, Texas 75032 5:30 PM

1. CALL TO ORDER

2. EXECUTIVE SESSION

The City Council for the City of McLendon-Chisholm, Texas, reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, §551.071 - Consultation with attorney, §551.072 - Real Property; §551.073 - Prospective Gifts; §551.074 - Personnel Matters; §551.076 - Security Devices; §551.086 - Utility Competitive Matters; and §551.087 - Economic Development Negotiation

2.1. The City Council will convene into executive session as authorized by the Texas Government Code, Chapter §551.071 - Consultation with attorney; To seek legal advice regarding a letter received on December 19, 2025 from the attorney for DR Horton regarding the Fire Protection and EMS Services agreement terminated by the City on July 9, 2024.

3. INVOCATION AND PLEDGE

4. RULES OF DECORUM

5. PROCLAMATIONS

6. CITIZEN COMMENTS

7. CONSENT AGENDA

7.1. Consider approval of minutes from Dec. 9, 2025 City Council Meeting

7.2. Discuss and consider approving a Resolution amending section 3.01.001 of Article 3.01 of Chapter 3, "Building Regulations, " of the Code of Ordinances by amending the fee schedule

8. ITEMS FOR DISCUSSION

8.1. Discuss and consider a resolution adopting a Wastewater Masterplan.

8.2. Receive a presentation from Volkert, Inc. regarding engineering services for a citywide roadway condition assessment and development of a Roadway Capital Improvement Plan.

- 8.3. Discuss and consider a resolution awarding a contract for the SH 205 and M 550 Sanitary Sewer Improvements project to JWC Excavation, LLC
- 8.4. Discuss and consider authorizing the issuance of a Request for Proposals(RFP) for disaster recovery administrative services and a Request for Qualifications (RFQ) for engineering services related to FEMA Public Assistance (PA) and Hazard Mitigation Assistance (HMA) funding administered by FEMA, the Texas Division of Emergency Management, and/or the Texas Water Development Board.
- 8.5. Discuss and consider an ordinance amending Article 1 of Chapter 12, Traffic and Vehicles, by adding Section 12-1-006 to prohibiting stopping, standing, or parking on designated residential streets, and establishing a no stopping, standing, or parking zone on the east side of Via Toscana Lane from SH 205 to the roundabout
- 8.6. Discuss and consider an ordinance amending Chapter 3, "Building Regulations" of the code of ordinances by adding Article 3.09 "Short-Term Rentals", establishing regulations for the registration, permitting and operation of Short-Term Rentals.
- 8.7. Discuss and consider a resolution authorizing the installation of eight (8) stop signs and intersections along Settlement Lane between Pullen Road and Birthright Lane.
- 8.8. Discuss and consider approving the appointment of two members on the Planning & Zoning Commission, and one member to the Board Adjustments as an alternate.
- 8.9. Discuss and consider a resolution adopting a Boards, Committees, and Commissions attendance and reappointment policy.
- 8.10. Discuss and consider an ordinance approving the order of a special election for the purpose of the abolition of an additional sales and use tax within McLendon-Chisholm at the rate of 0.5 percent and the adoption of a local sales and use tax in McLendon-Chisholm at the rate o.' 0.5 percent to provide revenue for maintenance and repair of municipal streets.
- 8.11. Discuss and consider approval of an ordinance establishing a Hotel-Motel Occupancy Tax Fund; providing for the collection, deposit} and use of HotelMotel Occupancy tax revenues.
- 8.12. Discuss and consider a resolution awarding request for proposal (RFP) 202601-05 to PMG Paving, LLC for asphalt paving services and cement stabilization on Smith Rd, Connie Ln, and League Rd.
9. COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS
The City Council will have an opportunity to address items of community interest including: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized

or sponsored by the City of McLendon-Chisholm; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the City of McLendon-Chisholm that was attended or is scheduled to be attended by a member of the City Council or an official or employee of the City of McLendon-Chisholm; and announcements involving an imminent threat to the public health and safety of people in the City of McLendon-Chisholm that has arisen after posting the agenda.

10. ADJOURN

I, Angela Jennings, do hereby certify that the above Notice of Meeting of the City Council of McLendon-Chisholm, Texas was posted or before 5:00 p.m., Jan 6, 2026 on the outside bulletin board at City Hall, a place convenient and readily accessible to the public at all times.



MINUTES
City Council
December 9, 2025
1371 WEST FM 550 - McLENDON-CHISHOLM, TEXAS 75032 5:30 PM

COUNCIL Mayor Pro Tem Jerry Brewer
PRESENT: Council Member Donald Goodwin
Council Member Arik Towry
Council Member Rich Dean
Council Member Dennis London

STAFF	Fabrice Kabona, City Manager	Michael Halla, City Attorney
PRESENT:	Angela Jennings, City Secretary	Jeff White, Finance Director
	Peyton Sherman, City Planner	Rockwall County Deputy
	Eddie Stough, Fire Chief / Fire Marshal	

1. CALL TO ORDER

Mayor Pro Tem Jerry Brewer called the meeting to order at 5:33 PM

Mayor Pro Tem and Council adjourned to Executive Session at 5:34

2. EXECUTIVE SESSION

The City Council for the City of McLendon-Chisholm, Texas, reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, §551.071 - Consultation with attorney, §551.072 - Real Property; §551.073 - Prospective Gifts; §551.074 - Personnel Matters; §551.076 - Security Devices; §551.086 - Utility Competitive Matters; and §551.087 - Economic Development Negotiation

- 2.1. The City of McLendon-Chisholm City Council will recess into executive session to consult with the attorney as authorized by §551.071(2) of the Texas Government Code, to wit: To Glen Acres Subdivision Petition to the City of McLendon-Chisholm to convert the private roads of the subdivision into city-owned and maintained roads.

Mayor Pro Tem Brewer reconvenes general session at 6:37 P.M

3. INVOCATION AND PLEDGE

Mr. Halla leads the council in the Invocation.

Mr. London led the council in both US and TEXAS pledges.

4. RULES OF DECORUM

Tonight's meeting is dedicated to fallen hero Private Jalfred Vaquerano

5. PROCLAMATION

6. PUBLIC HEARING

- 6.1. Public Hearing to consider adoption of an ordinance amending Chapter 3, "Building Regulations," of the Code of Ordinances by adding Article 3.09, entitled "Short-Term Rentals." The proposed ordinance establishes regulations for the registration, permitting, and operation of short-term rental properties within the City. It provides enforcement and penalty provisions, outlines operational and safety standards, and ensures compliance with hotel occupancy tax requirements in accordance with Chapter 351 of the Texas Tax Code.

Hearing called to order at 6:40 PM

Speakers: Shari London - 216 Harvest Ridge

Supports noise limits, parking rules, trash standards, safety equipment, having local contacts

Would like to add safeguards, that will not only protect our neighborhoods but protect the rights of those citizens who wish to utilize short term rental on their property.

Amy Hall - 211 Tucker Rd.

Supports reasonable regulations but must be fair for those of us who are small local host. She points out several of the stipulations that she feels are too restrictive and gives suggestions of regulations she would like to see changed.

Dennis London - 216 Harvest Ridge

Spoke on Short Term Rentals stating we need to protect neighborhood but limit government, not the people. He believes

that we need to be very careful with labeling the homes for Hotel Occupancy Tax , this will also open those homes up for hotel regulations, it does not fit with the STR.

STR Hearing ends at 6:51 PM

- 6.2. Public Hearing to consider the establishment of the Willowcreek Planned Development District (PD) on approximately 360.30 acres of land located within and adjacent to the City limits of McLendon-Chisholm. The property is generally located behind City Hall, extending across portions of Klutts Road between Smith Road and State Highway 205, and includes a portion fronting FM 550. The proposed PD zoning is associated with the annexation of the subject property into the City and is intended to assign a zoning designation consistent with the associated Annexation and Development Agreements.

Hearing opened at 6:52 PM

Shari London - commended the developers for working with the City to accomplish a look and feel that works for the City.

Rocky Martin - Lives next to this property and is worried about the habitat he has created on the property. He is concerned about the density of the development and what it will bring.

David Black - 1419 Siena Lane. Reminded council that the top reason people move to McLendon-Chisholm was the open space and reminded them to take a look at the Comprehensive Plan. He states this development is not in compliance with the Comp plan. He also points out that density should be measured by Net acreage not Gross as was used in the developers plans.

Hearing closed at 7:05 PM

7. CITIZEN COMMENTS

Gary Nichol spoke against the Glen Acres application for road repairs. He also read a letter from Leonard Jarvis, a neighbor who was unable to attend the meeting.

8. CONSENT AGENDA

- 8.1. Consider approving Minutes from Nov 10, 2025 City Council Meeting

RESULT:	APPROVED TO
MOTIONED BY:	Council Member Dennis London
SECONDED BY:	Council Member Donald Goodwin
FOR:	5
AGAINST:	None
ABSTAIN:	None

9. ITEMS FOR DISCUSSION

- 9.1. Discuss and consider an Ordinance annexing approximately 19.325 acres of land (six tracts) located in the W.W. Ford Survey, Abstract No 80, Rockwall County, Texas, into the corporate limits of the City of McLendon-Chisholm.

RESULT:	APPROVED TO ANNEXING 19.325 ACRES OF LAND LOCATED IN THE WW FORD SURVEY, ABSTRACT NO 80
MOTIONED BY:	Council Member Donald Goodwin
SECONDED BY:	Council Member Arik Towry
FOR:	5
AGAINST:	None
ABSTAIN:	None

- 9.2. Discuss and consider action on Glen Acres Subdivision Petition to the City of McLendon-Chisholm to convert the private roads of the subdivision into city-owned and maintained roads.

Council Member Rich Dean points out that these citizens that live in the Glen Acres Subdivision are not receiving the same services that the rest of McLendon-Chisholm receive because of the condition of the road. He was shocked to find out that children have to cross over 205 to catch the bus because the buses can no longer go down that road.

Council Member Donald Goodwin states that he knows there is a great need, and explains that the citizens are going to pay back the cost of the roads.

Mayor Pro Tem Jerry Brewer states that because of the need of repairs for the road there are many services that are no longer available including buses, meals on wheels and slower response time which can mean life or death in emergency.

There are several of our neighborhoods that are 25 years or older and we are trying to get ahead of coming growth and problems that go along with that. He also ask the neighborhood representative a few questions to clarify that the citizens know that they will be required to pay this back and that their property will have a lien placed on it until their assessed amount has been paid.

RESULT:	APPROVED TO
MOTIONED BY:	Council Member Rich Dean
SECONDED BY:	Council Member Dennis London
FOR:	5
AGAINST:	None
ABSTAIN:	None

- 9.3. Discuss and consider an Ordinance approving a Planned Development (PD) on approximately 360.295 acres located along FM 550 and Klutts Dr, adopting concept plan, phasing plan, and Development Regulations.

Fabrice Kabona gives the staff report and introduces Willow Creek Rep to answer any questions council might have.

Council Members had a few questions but were very appreciative of the

developer and the willingness to help reach a development that was good for the city as well.

RESULT:	APPROVED TO
MOTIONED BY:	Council Member London
SECONDED BY:	Council Member Goodwin
FOR:	5
AGAINST:	None
ABSTAIN:	None

9.4. Discuss and Consider a Resolution authorizing and creating the Willow Creek Public Improvement District. (PID)

City Manager gives the staff report and recommends approval.

RESULT:	APPROVED TO AUTHORIZE AND CREATE WILLOW CREEK PID
MOTIONED BY:	Council Member Dennis London
SECONDED BY:	Council Member Donald Goodwin
FOR:	5
AGAINST:	None
ABSTAIN:	None

9.5. Discuss and consider an Ordinance of the City of McLendon-Chisholm, Texas, amending section 3.01.001 of Article 3.01 of Chapter 3, "Building Regulations," of the Code of Ordinances by amending the fee schedule; providing a Repealing Clause; Providing a Savings Clause; Providing a Severability Clause; and Providing for an Effective Date.

Finance Director, Jeff White gives the staff report for the Fee Schedule Changes. Mayor Pro Tem ask that Mr. White go through the changes that are being made. Council had a few specific questions which Mr. White and Mr. Kabona answered.

RESULT:	APPROVED
MOTIONED BY:	
SECONDED BY:	
FOR:	5
AGAINST:	None
ABSTAIN:	None

- 9.6. Discuss and consider an Ordinance amending Article 4 "Zoning Districts", Section 4-8 "General Business District" by setting hours of operation, regulating noise and light and sound in the General Business (GB) Zoning District for Restaurants.

Mr. Kabona refers the item explanation to CM Arik Towry. CM Towry explains to council and citizens what the purpose of the Ordinance is and states that again, he is wanting to get ahead of the commercial growth in the city. The other council members thank CM Towry for the work he is doing for future growth.

- 9.7. Discuss and consider an Ordinance ordering a General Election to be held on May 2, 2026 for the purpose of electing at large a Mayor, Councilmember Place 2, Councilmember Place 4 and Councilmember Place 6; authorizing a joint election order with other Rockwall county political subdivisions; authorizing the Mayor or City Administrator to enter into an agreement with Rockwall county for the election; providing the manner and means of carrying out said election; designating polling locations and hours; providing for early voting; and providing bilingual election requirements; providing for notice of the election; and providing for publication of the notice for the election.

RESULT:	APPROVED
MOTIONED BY:	Council Member Rich Dean
SECONDED BY:	Council Member Dennis London
FOR:	5
AGAINST:	None
ABSTAIN:	None

- 9.8. Discuss and consider authorizing the City Manager to approve a Change Order in an amount not to exceed \$25,000.00 for roof repairs as part of the remodel of the old Fire Station building on FM 548 and authorizing the City Manager to approve future Change Orders up to 10% of the Original Contract Amount.

Jeff White gave the staff report and showed the council the progress being made on the old Fire Station Remodel.

RESULT:	APPROVED TO
MOTIONED BY:	Council Member Dennis London
SECONDED BY:	Council Member Donald Goodwin
FOR:	5
AGAINST:	None
ABSTAIN:	None

- 9.9. Discuss and consider an Ordinance abandoning a portion of Pullen Road (approximately 2180 ft) from FM 550 to Horizon Lakes Boulevard and declaring that such property is unnecessary for use by the public.

Mr. Kabona, City Manager gives the staff report and introduces Matt Atkins, Representative for TNP, Horizon Lakes to explain exactly what part of the road will be abandoned and answer any questions that the council might have.

RESULT:	APPROVED TO
MOTIONED BY:	Council Member London
SECONDED BY:	Council Member Towry
FOR:	5
AGAINST:	None
ABSTAIN:	None

9.10. Receive an update from staff regarding ambulance service operation

Fire Chief, Eddie Stough gives an update on the ambulance service operation. He outlines his plan to be ALS certified in our emergency services. He also answers questions and concerns from the council.

10. COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS

The City Council will have an opportunity to address items of community interest including: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the City of McLendon-Chisholm; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the City of McLendon-Chisholm that was attended or is scheduled to be attended by a member of the City Council or an official or employee of the City of McLendon-Chisholm; and announcements involving an imminent threat to the public health and safety of people in the City of McLendon-Chisholm that has arisen after posting the agenda.

CM Dennis London - announces the demonstration of the Asphalt zipper, but then is told demo will be in Desoto. He also reminds public about the Toys for Tots, Dec. 11, 4 PM

CM Goodwin - Rosa's and 8:00 AM - Frank New is the Guest.

Fabrice Kabona, - still looking for volunteers for several committees.

Jerry Brewer - Went to Emergency Services meeting - Royse City has pulled out of the Contract so they are re calculating cost. I will be at Mr. Goodwin's meeting as well.

11. ADJOURN

Meeting is adjourned at 8:22 PM

[MIN_SIGNATURES]

RESOLUTION NO. 2026 - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, ADOPTING AN AMENDED FEE SCHEDULE FOR ALL FEES AND CHARGES ASSESSED AND COLLECTED BY THE CITY; INCORPORATING THE AMENDED FEE SCHEDULE AS EXHIBIT “A”; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of McLendon-Chisholm, Texas (“City”), periodically reviews the City’s fees and charges to ensure they are reasonable, equitable, and reflective of the cost of providing services; and

WHEREAS, City staff has prepared an amended Fee Schedule to update certain fees and charges assessed and collected by the City; and

WHEREAS, the City Council has reviewed the proposed amended Fee Schedule and finds that its adoption is in the best interest of the City.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF MCLENDON-CHISHOLM, TEXAS THAT:

SECTION 1. That the amended Fee Schedule, attached hereto and incorporated herein as Exhibit “A”, is hereby adopted to establish the fees and charges assessed and collected by the City.

SECTION 2. That all resolutions or parts of resolutions of the City Council in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict, and all other resolutions or parts thereof not in conflict shall remain in full force and effect.

SECTION 3. That this Resolution shall become effective immediately upon passage and approval, or on such date as specified within Exhibit “A,” in accordance with applicable law.

PASSED AND APPROVED by the City Council of the City of McLendon-Chisholm, Texas, on this the 13th day of JANUARY, 2026.

APPROVED:

Bryan McNeal, Mayor

ATTEST:

Angela Jennings, City Secretary



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider a resolution adopting a Wastewater Masterplan

Background:

Over the past several years, the City has experienced increased development activity, including requests for new residential projects requiring connection to the City's wastewater system. Some of these developments were approved through negotiated development agreements that allowed for variations from existing development standards. As a result, City staff, in coordination with the City Engineer, determined that a comprehensive evaluation of the wastewater system was necessary to ensure adequate capacity, coordinated planning, and long-term reliability as development continues within the City.

Freeman-Millican, Inc., which previously completed a wastewater study for the Sonoma Verde development in 2013, was selected to prepare the Wastewater Masterplan due to its familiarity with the City's system and development history.

The proposed Wastewater Masterplan aligns with the City's Comprehensive Plan by supporting orderly infrastructure planning for approved development while maintaining consistency with the City's long-term land use policies and growth objectives.

Fiscal Impact:

The recommended wastewater improvements will be developer-funded, consistent with existing developer agreements. The City's financial participation is limited to agreed-upon reimbursements through connection fees. No immediate fiscal impact to the City's operating budget is anticipated.

Options/Alternatives:

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution.

Recommendation:

Staff recommend approval of the resolution, as presented.

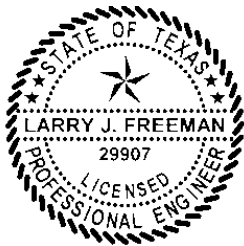
Attachments:

- Resolution
- Wastewater Master Plan

Presenter: Fabrice Kabona, City Manager



WASTEWATER MASTER PLAN
FOR THE
CITY OF MCLENDON-CHISHOLM



A handwritten signature in black ink, appearing to read "Larry J. Freeman".



A handwritten signature in black ink, appearing to read "Michael L. Mikeska".

PREPARED BY:



9330 Lyndon B. Johnson Freeway
Suite 1225
Dallas, Texas 75243
214-503-0555
#F - 2827

DECEMBER 29, 2025





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Executive Summary

The City of McLendon-Chisholm approached Freeman-Millican, Inc. (FMI) to assist with planning wastewater service for current developments and evaluate long-term improvements to accommodate future growth.

The current wastewater service is limited to the existing Sonoma Verde development on the east side of State Highway (SH) 205 and the commercial development along SH 205. These areas are served by the existing Sonoma Verde lift station (LS), which pumps into an 8-inch force main along Farm to Market (FM) 550 which discharges into the North Texas Municipal Water District (NTMWD) Buffalo Creek Interceptor.

Developments with approved or pending plats for residential lots smaller than one acre include:

- Existing Sonoma Verde
- Sonoma Verde North (Sloan tract)
- Sonoma Verde East (Tate tract)
- Commercial development (along SH 205)
- Legacy Park development (adjacent to City Hall)
- Willow Creek (Skorburg property, south of Legacy Park)
- Future RISD school (east of City Hall)
- Horizon Lakes (Trilogy) development (west on FM 550)

Note that the Hidden Lakes development serves to the NTMWD interceptor, but does not impact the capacity required in the force mains to serve the other properties.

According to the Comprehensive Plan and Zoning requirements, all other properties/developments in the City of McLendon-Chisholm must have lots of one acre or larger. Therefore, the wastewater improvements considered in this report are limited to serving the developments listed above. It should be noted that service for the Horizon Lakes development, located toward the west end of the service area, does not impact the lift stations or force mains needed for the other developments.

The recommended improvements to serve the developments listed above include constructing a new lift station - preferably constructed on the Willow Creek property - and installation of new force mains: approximately 10,000 linear feet of 8-inch pipe and 17,000 linear feet of 12-inch pipe, parallel to the existing 8-inch force main. The total estimated cost of these improvements is approximately \$6.4 million, to be borne by the developers of the benefiting properties. The cost proportioning of the actual design and construction cost must be agreed upon by the developers, which will result in agreements between developers and/or the City if reimbursements of a portion of any fees is agreed upon. A schematic of the recommended improvements is provided in Figure 5.





1.0 Introduction

The City of McLendon-Chisholm contracted with Freeman-Millican, Inc. (FMI) to conduct a comprehensive study of McLendon-Chisholm's wastewater system and to develop a strategic Master Plan to provide wastewater service to the City. FMI's analyses included a thorough review of the existing wastewater infrastructure currently serving the City and identification of necessary upgrades and/or new facilities required to meet future demands. The findings and recommendations resulting from these analyses are presented in this report.

Population growth and land use used in this study were derived from the current 2021 Comprehensive Plan (CP). The study area encompasses both McLendon-Chisholm's incorporated city limits and its Extraterritorial Jurisdiction (ETJ) as shown on Figure A-1 in Appendix A. In addition, the land use assumptions and Zoning information were used in the analyses to determine the wastewater facilities necessary to meet current and future system capacities. The land use assumptions map and zoning map are included in Appendix A as Figure A-2 and Figure A-3 respectively.

1.1 Background

McLendon-Chisholm is a rapidly growing city situated primarily in Rockwall County, Texas and just east of Dallas and south of the City of Rockwall. The City is primarily characterized by large residential lots, agricultural properties, and undeveloped land. Housing ranges from small lots in subdivisions like Sonoma Verde to larger estates, alongside ranches and farms. Located between the City of Rockwall and the City of Terrell, McLendon-Chisholm benefits from its proximity to SH 205, which connects the City to major highways and surrounding areas. This accessibility supports both residential and potential commercial growth along the SH 205 corridor.

Recent growth in the City has led to the development of new municipal facilities, expanded fire services, and an increased demand for law enforcement, parks, and recreational amenities. McLendon-Chisholm's proximity to major employment centers and the Dallas-Fort Worth metroplex has made it an attractive place to live, balancing rural charm with urban convenience.

As the City continues to grow, the planned development of a wastewater master plan will help ensure that its wastewater infrastructure can meet the needs of the expanding population and support future development.

The FY24-25 budgeted revenue for the Utility Fund is approximately \$1.2 million. Operating expenses are budgeted at \$788,700 resulting in 66% of the total costs. Additional expenditures bring the total budgeted expense to just over \$1,000,000 resulting in a net gain on the fund balance by the end of FY24-25.

1.2 Objectives

This report evaluates the wastewater facilities requirements for three phases of development:

- a. Existing Conditions,





b. Immediate Improvements and

c. Future Development

This study considers force mains, gravity sewers, and lift stations necessary to support the current and future wastewater flows.

This report includes:

- a. the methodology to establish current and future flow rates,
- b. the sizing of the force mains and gravity sewers, and
- c. the sizing of the lift station(s) needed to meet the anticipated flow.

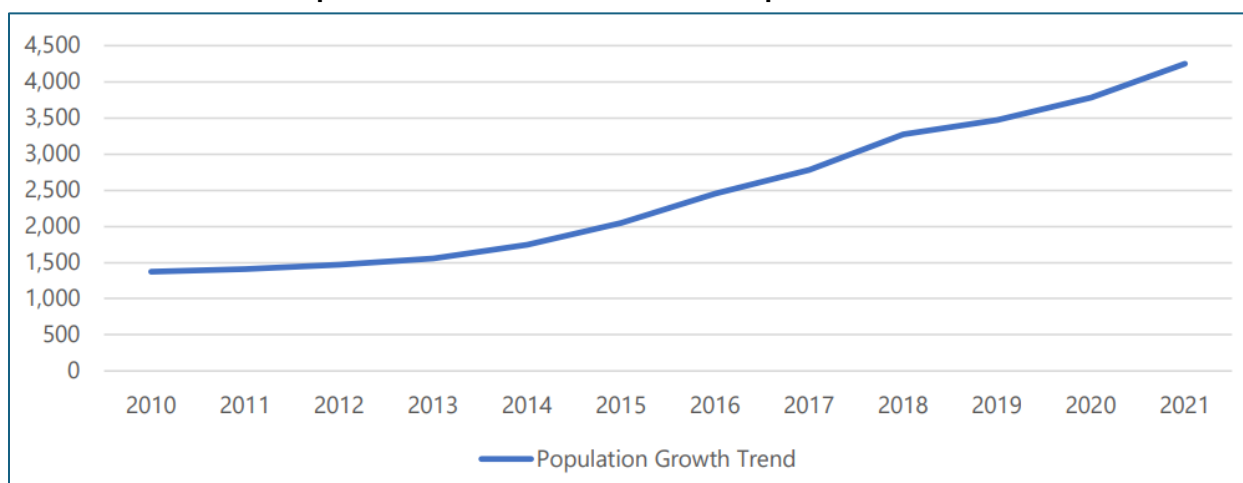
2.0 Population and Flow Projections

2.1 Population Estimates

The McLendon-Chisholm CP was adopted by the City Council in 2021. The population projection presented in the CP are shown on Figure 1 below. The published 2020 Census showed a population of 3,562 people and the North Texas Council of Governments (NCTCOG) estimated the population at 4,040 in 2024. This data is fairly consistent with the information in the Comprehensive Plan.

In evaluating the wastewater system needs, it is important that the growth in the city is significantly limited. Currently the only area that contributes wastewater to the existing system is Sonoma Verde. The estimated current population contributing to the existing wastewater system from Sonoma Verde is approximately 3,066 people based on 2.8 people per house/lot. The remaining population, as planned and described in the CP, is currently served by on-site septic systems.

Figure 1
Population Trend from the 2021 Comprehensive Plan





2.2 Existing and Active Developments

The City of McLendon-Chisholm includes a commercially zoned area along SH 205 (shown in Figure 2) slated for future development. The area, approximately 25 acres in size, is assigned an equivalent lot count based on TCEQ requirements (30 TAC Chapter 217, Subchapter B), which estimate flow rates for offices and similar facilities at 20 gpd, or 20% of residential flow rates. By applying a density of three lots per acre and adjusting for the 20% flow rate, this commercial development equates to an equivalent flow of fifteen (15) residential lots.

The following are in the early stages of development and the interim wastewater system improvements will need to be made to serve these. The City has recently approved preliminary plats and has established agreements with developers for the following:

- a. Sonoma Verde North (Sloan)
- b. Sonoma Verde South (Tate)
- c. Legacy Park development (adjacent to City Hall)
- d. Horizon Lakes (Trilogy) development (west on FM 550)

Additional planned developments, listed below, have also been incorporated into recommendations for immediate improvements. While specific construction timelines remain uncertain, projected flows are included to ensure proper planning:

- a. A new RISD school site located east of City Hall on FM 550 (equivalent to 65 residential lots)
- b. Residential development south of Legacy Park referred to as the Willow Creek property (414 residential lots). This number of lots is used for planning purposes because it is the initial proposed development from Skorburg to the City. This project was proposed when this study began, but City Council recently approved the development.
- c. Commercial development along SH 205

Together, the new school and residential developments contribute a total of up to 591 additional residential lot equivalents if the Willow Creek property develops as proposed.

The table below outlines the total lot count for each tract, providing a basis for projected wastewater flows within the service area. Figure A-4 in Appendix A shows the location of these development

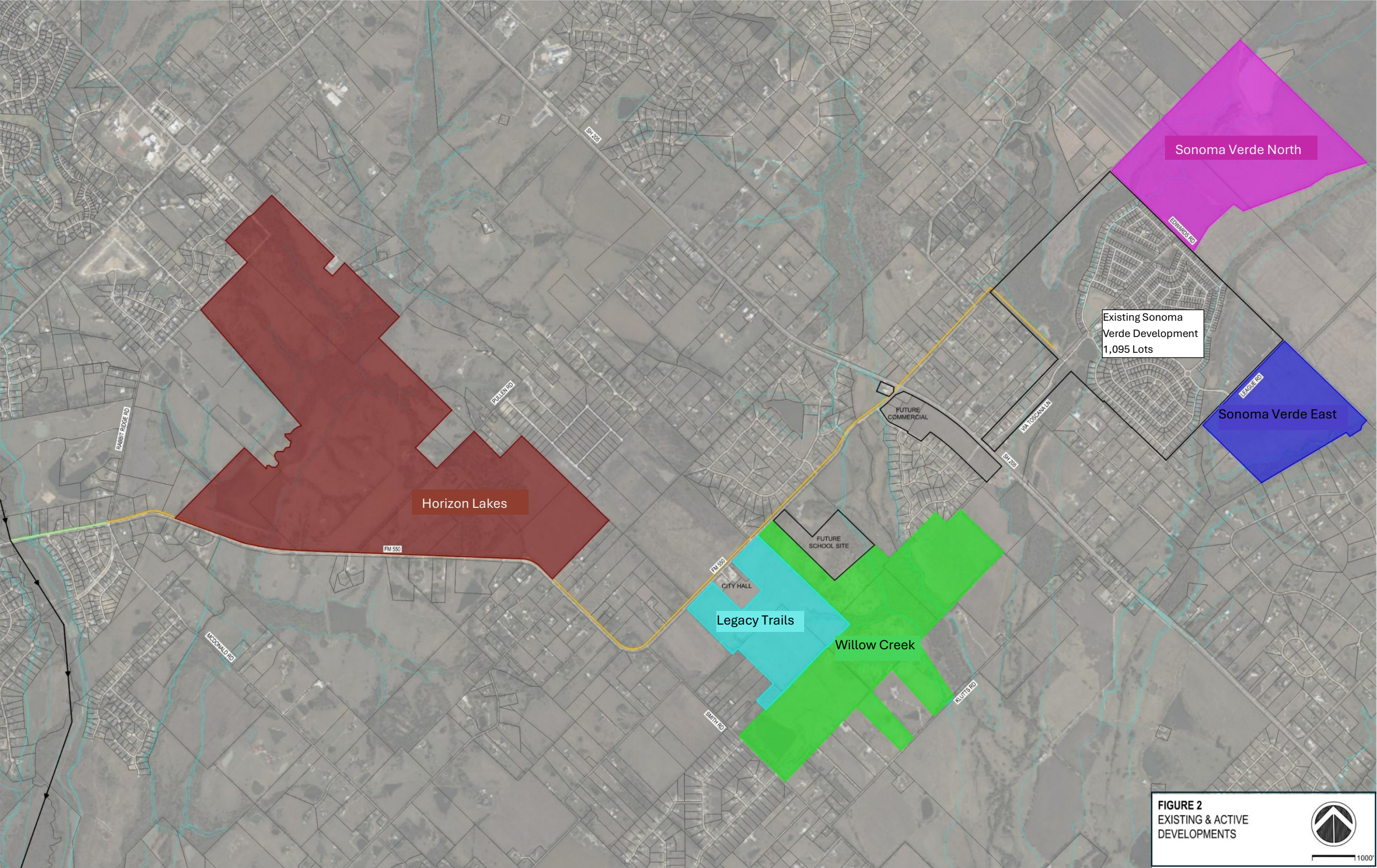


Table 1
Developments and Lot Counts for Immediate Improvements

DEVELOPMENT	EQUIVALENT NO. OF LOTS
Sonoma Verde	1,095
Sonoma Verde North	675
Sonoma Verde East	370
Commercial development	15
Future RISD school	65
Legacy Park development	185
Willow Creek (Skorburg property)	414
Horizon Lakes development	1,750
TOTAL	4,567

2.3 Projected Ultimate Buildout Population

The Comprehensive Plan makes the statement that McLendon-Chisholm reaching a population “of more than 25,000 by 2040 is not out of the question without unanticipated measures by State officials to give cities back powers to control growth in the ETJ, The City should actively start communicating the complexities in the ETJ to community members to manage expectations, as well as establishing standard Master Planned Community design and engineering requests of developers. This exponential growth is not consistent with what the community is expecting or what it wants, but it is the reality of what is on the horizon. The city can control all land wholly within the city limits, however, with full zoning powers.” It should be noted that the current plan to sewer properties is not sized for citywide sewer. The existing sewer system was only sized to serve the Sonoma Verde subdivision, a small commercial area, future school and an unspecified location for 400 future residential lots. These were approved based on exceptions to the Comprehensive Plan.

Under current planning criteria, the 2021 Comprehensive Plan as shown on the Land Use Plan and Zoning Plan, show that all future developments will have lot sizes at 1 acre or larger. If this remains the City’s plan, then the interim wastewater system improvements discussed in this report will be the Ultimate Plan. If the City chooses to allow smaller than one-acre lots to be developed, the Wastewater Master Plan will need to be revised.

3.0 Water Consumption

Generally, wastewater flow evaluations consider water consumption over a specified period. McLendon-Chisholm, however, does not operate its own water system; instead, it is served by two separate entities: High Point SUD and Rockwall-Chisholm-Heath WSC. Each entity serves approximately one-half of the City limits. Because much of the City relies on on-site septic systems,





total water usage from these providers does not directly correlate with sewer service. Therefore, water consumption data was not used in evaluating overall wastewater flow rates for design criteria.

4.0 Design Criteria

TCEQ Chapter 217, Subchapter D defines the requirements for wastewater system pipeline design. Some of the key elements required and that were utilized in this study include:

- a. Flows per residential unit were calculated using an average daily flow of 80 gallons per day per person with an average house/lot size of 3 people. This equates to 240 gallons per day per residential unit.
- b. Calculation of demands must account for inflow and infiltration. For Sonoma Verde, flow was measured, and a peaking factor was calculated based on the peak flow to average daily flow ratio. It was determined the peaking factor is 3.1 and this was utilized for the Sonoma Verde developments. Flows for the Legacy Park and Willow Creek developments were calculated utilizing a 4:1 peaking factor because no flow data was available for those areas.
- c. Pipes need to be sized accordingly, including maintaining a minimum velocity of 3 fps in force mains.
- d. Odor control measures must prevent nuisance conditions.
- e. The minimum gravity pipe size is 6 inches in diameter and must maintain a minimum velocity of 2 fps when flowing full.

5.0 Existing Wastewater System

5.1 Overview

McLendon-Chisholm has an agreement with the City of Rockwall, authorizing up to 3.7 million gallons of flow (averaged over a 30-day period), which is equivalent to approximately 6,076 residential connections to the Buffalo Creek Interceptor, which is owned and operated by NTMWD. This connection limit is based on the maximum daily flow, calculated using an average of 2.8 people per house/lot. Currently, most of the wastewater flow entering the NTMWD main comes from Sonoma Verde, located on the east side of SH 205 and FM 550.

5.2 Wastewater Collection System

Most of the current residential developments within the McLendon-Chisholm city limits have taken place on lots of at least 1 acre in size. As a result, much of the area is served by on-site sanitary sewer facilities (e.g., septic systems). The wastewater system that serves residential properties that are less than 1 acre includes gravity sewers, lift stations and force mains. Currently, these lots are located within or near the existing Sonoma Verde, the commercial development along SH 205, and Horizon Lakes. The wastewater from these facilities is discharged into the existing NTMWD Buffalo Creek trunk sewer. The existing wastewater system is shown in Figure 3.







5.3 Wastewater Lift Stations

The existing Sonoma Verde lift station and a small lift station are located near the southeast side of Sonoma Verde. According to the operator, the pumps are functioning properly, and the station is managing flows as expected. The on-site generator is also functioning as designed. The pump and lift station information for the existing Sonoma Verde lift station is provided in Appendix B. Based on a review of the pump curves and system evaluation, the lift station and the 8-inch force main currently have a capacity of 580 gallons per minute (gpm). The existing lift station is not sized to accommodate growth from the Sonoma Verde North (Sloan) and Sonoma Verde East (Tate) developments. There is very little remaining capacity which calculates to approximately 6 gpm flow rate.

6.0 Flow Projections

The existing Sonoma Verde development contributes 566 gpm to the system. Within the McLendon-Chisholm city limits, there are four developments, either approved or proposed, that include residential lots smaller than 1 acre. These developments will require wastewater facilities that will discharge into the existing NTMWD trunk sewer in Buffalo Creek. If the city decides to allow developments with lots smaller than one acre, additional evaluations will be needed.

The current active developments, which are addressed in Section 2.2, will contribute to the immediate needs to expand the wastewater system. Flow calculations for these developments show the increased demands, summarized in Table 2.

It should be noted that the wastewater from Horizon Lakes development flows directly into the gravity sewers, which flow into the NTMWD Buffalo Creek trunk sewer. Therefore, the Horizon Lakes flow has no bearing on sizing of force mains and lift stations that serve the other properties upstream of their point of connection.

A few years ago, flows from Sonoma Verde were measured to determine actual demands on the system. The measurements showed an average daily flow per lot for the 1,095 connections was 240 gallons per day. The data also indicated a peaking factor of 3.1, resulting in a peak flow rate of 0.5167 gpm per lot. This equates to a total peak flow of 566 gpm for the entire development (1,095 lots x 0.5167gpm per lot). Adding approximately 8.0 gpm from the commercial development brings the system to its current capacity. As a result, upgrades to the existing wastewater system are necessary to accommodate any further development.

For future developments included in the evaluation, flow rates were assigned based on an assumed number of persons per connection for residential units, with a 4:1 peaking factor applied, in line with TCEQ standards.





Table 2
Projected Wastewater Flows for Existing and Active Developments

DEVELOPMENT	NUMBER OF CONNECTIONS	AVERAGE DAILY FLOW PER CONNECTION	AVERAGE DAILY FLOW (GPM)	PEAK FLOW (GPM) (1)
Sonoma Verde	1095	240	183	566
Sonoma Verde North	675	240	113	349
Sonoma Verde East	370	240	62	191
Commercial development	15	240	2.5	8
Future RISD school	65	240	11	43
Legacy Park development	183	240	31	122
Willow Creek (Skorburg property)	414	240	69	276
Horizon Lakes development (2)	1,750	240	292	1,167
TOTAL	4,567		761	2,721

Note (1) - Peak flow calculations used 3.1 factor for Sonoma Verde and commercial based on measured flows. A 4:1 peaking factor was used for other developments.

Note (2) – Flows from the Horizon Lakes Development will only impact the downstream gravity sewers. Therefore, these flows were not considered when sizing new force mains.

7.0 Review of Required Wastewater Improvements

The options for improvements discussed below are predicated on the assumption that all developers can come to an agreement on cost sharing and fund the improvements. City staff indicated that the City cannot fund any portion of the improvements. Agreements between developers or developers and the City must be created to structure reimbursements for additional capacity. The timing of development has an impact on the considerations and has an impact on the final decisions as well. Sonoma Verde completed the initial improvements and now has City-approved preliminary plat(s) for expanding the development, adding the Sloan and Tate tracts.

The initial recommendation to serve Sonoma Verde also included capacity for 400 additional lots, which required a 12-inch force main to be constructed. However, based on the approved plat at the time the force main was built, the actual number of known new homes and the requirement to maintain velocity in the force main to meet TCEQ requirements, only an 8-inch force main was





constructed from the Sonoma Verde LS to the NTMWD meter vault. This seems to indicate that the plan for any additional capacity would require a parallel force main along FM 550. The existing 8-inch force main would be utilized by the current Sonoma Verde development. If only the Sonoma Verde North and East (Sloan and Tate tracts) along with the commercial development along SH 205 are served, the sizing and length of a parallel force main would be an 8-inch line.

The downstream 12" gravity sewer was originally designed to have sections constructed on 0.5% slope. However, as-built data provided by Teague Nall & Perkins (TNP), who is contracted by Taylor Duncan, LLC to design the improvements along FM 550, revealed the sections were built on a greater slope than that, resulting in more capacity than originally understood. There are two sections that do not meet the calculated peak flow of 2,721 gpm. One is built on 0.95% and the other is on 1.14% slope. These existing sections result in a full pipe flow of 2,354 gpm and 2,597 gpm respectively using a pipe coefficient of 150 for plastic pipe. Therefore, the resulting increase in capacity required is 367 gpm for the 0.95% section and 124 gpm for the 1.14% section. Since the section on 1.14% is only 124 gpm below theoretical capacity, it would only require a 4" parallel pipe, and the flow can easily be handled by the existing 12" pipe with a slight surcharge and increase in head conditions. The as-built profile from TNP is provided in Appendix A.

7.1 Immediate Improvements (Active Developments)

In order to provide the wastewater system capable of service to the Legacy Park, Willow Creek and RISD school, additional improvements will be required. Two (2) alternates were developed to handle the immediate improvements required for the identified developments. Both alternates are similar in that they require a new lift station to be built on the south side of FM 550. Alternate 1 includes sizing the lift station to only handle the new flows to the system; Alternate 2 sizes the lift station for all flows from the existing Sonoma Verde connections plus all planned development. These recommendations are shown graphically in Figures 4 and 5 and are summarized below.

7.1.1 Alternate 1 (see Figure 4):

- a. Upgrade the existing system from Sonoma Verde to the new developments by constructing a parallel 8 inch force main 10,000 LF to handle the increase in flow from Sonoma Verde, Sonoma Verde North and East, and the commercial development. The main will be installed from the existing Sonoma Verde Lift Station to a new manhole along FM 550 at the entrance to the Legacy Park Development. The capacity required is 1,115 gpm.
- b. Upgrade the existing Sonoma Verde LS capacity by increasing the impeller size from a 13-inch to a 13.5- or 14-inch impeller.
- c. Legacy Trails will require an 8-inch gravity main from their property to the new lift station proposed on the Willow Creek (Skorburg) property.
- d. Construct a second lift station south of FM 550 with an 8-inch force main dedicated solely to serving the Legacy Park, Willow Creek, and the RISD school properties. The peak flow contributing to the new lift station is 415 gpm.





- e. The new 8-inch force main from the new lift station will tie into the existing 8-inch force main near City Hall.
- f. Construct a new 12-inch force main (approximately 17,000 lf) from near City Hall to the NTMWD meter vault near Rabbit Ridge Road. The existing 8-inch force main from the Sonoma Verde LS and the parallel force main from the Sonoma Verde LS to City Hall will tie into the new 12-inch force main and carry the flow from Sonoma Verde, Sonoma Verde North and East, and commercial developments.
- g. Construct a 6-inch gravity main parallel to the existing 12" section on 0.95%. This is along the area between Rabbit Ridge Road and the NT interceptor.

7.1.2 Alternate 2 (see Figure 5):

- h. Upgrade the existing system from Sonoma Verde to the new developments by constructing a parallel 8 inch force main 10,000 LF to handle the increase in flow from Sonoma Verde, Sonoma Verde North and East, and the commercial development. The main will be installed from the existing Sonoma Verde Lift Station to a new manhole along FM 550 at the entrance to the Legacy Park Development. The capacity required is 1,115 gpm.
- i. Upgrade the existing Sonoma Verde LS capacity by increasing the impeller size from a 13-inch to a 13.5- or 14-inch impeller.
- j. Construct a 12-inch gravity main from FM 550 to the new lift station. The capacity must accommodate 1,115 gpm from the Sonoma Verde LS plus the flow generated by Legacy Park (123 gpm) and Willow Creek (248 gpm) and future school (44 gpm).
- k. Construct a second lift station south of FM 550 with an 8-inch force main dedicated solely to serving the Legacy Park, Willow Creek, and the RISD school properties. The peak flow contributing to the new lift station is 1,560 gpm.
- l. Construct a parallel 10-inch force main from the new lift station to the NTMWD meter vault (approximately 21,500 linear feet) to accommodate the 1,560-gpm flow from all developments identified (except Horizon Lakes).
- m. Construct a 6-inch gravity main parallel to the existing 12" section on 0.95%. This is along the area between Rabbit Ridge Road and the NT interceptor.

An Opinion of Probable Construction Costs was developed for Alternate 1 and Alternate 2. The details for each project are provided in Appendix C. A cost summary is shown in Table 3 below.

7.1.3 Development Schedule and Considerations

If one of these alternates is not selected (or not feasible due to timing of projects), then each developer would have to install their own individual lift station and force main to handle only their respective peak flows. This approach would result in at least three parallel force mains along FM 550 from near City Hall to the NTMWD meter vault, making it an undesirable approach due to the complexity and redundancy.





7.1.4 Additional Comments

Note that there are common components required for either Alternate 1 or 2:

- n. Construct an 8-inch force main from the existing Sonoma Verde LS to near City Hall.
- o. Upsize the impellers in the existing Sonoma Verde LS.
- p. Construct parallel 12-inch gravity mains downstream.

Other than these projects, the sizing of the new lift station and length of force mains to serve the new developments vary.

Table 3
Summary of Estimated Costs for Alternates 1 & 2

Alternate 1		Alternate 2	
Parallel 8-inch FM to school	\$1,043,300	Parallel 8-inch FM to school	\$1,043,300
New lift station	\$756,000	New lift station	\$1,352,500
New 8-inch FM, new LS to FM 550	\$445,625	Gravity sewer from FM 550 to new lift station (4,500 LF)	\$902,850
Upgrade existing. Sonoma Verde pump impellers	\$75,000	New 10-inch FM, new LS to FM 550 (4,500 lf)	\$607,500
Parallel 12-inch FM from school to NT (17,000 LF)	\$2,267,350	Upgrade existing Sonoma Verde pump impellers	\$75,000
Downstream gravity sewer, 6-inch Parallel (500 LF) – See Note 2	\$133,100	Parallel 10-inch FM from school to NT (17,000 LF)	\$1,903,000
		Downstream gravity sewer, 6-inch Parallel (500 LF) – See Note 2	\$133,100
Total Cost	\$4,720,375	Total Cost	\$6,017,260

Note 1: the majority of these costs were developed based on construction costs provided by Double R Construction and assumes the developer is responsible for the bidding process.

Note 2: It is recommended to defer construction to a later date until actual monitored peak flows and actual growth prove the need for the parallel 6 inch gravity main as noted under Recommended Alternative.





8.0 Recommended Alternate

After analyzing pipe sizes, head loss, construction costs, and consulting with the developers, the following solution is recommended. The recommended improvements are based on Alternate 1 shown graphically in Figure 4. These improvements are 100% developer-driven and therefore will be funded by the Developers. The City has no financial obligation other than what might be adopted by Council through a PID or reimbursement agreement in repaying the Developer for a portion of their costs incurred.

- A. Construct an 8-inch parallel force main from the existing Sonoma Verde LS to the developments near City Hall.
- B. Upgrade the Sonoma Verde LS by replacing the existing 13-inch impeller with a 13.5 or 14-inch impeller. This, in conjunction with the new 8-inch force main, will provide a capacity of 1,115 gpm to serve both existing and proposed Sonoma Verde developments, plus the commercial development.
- C. Build a new lift station on the Willow Creek property, south of Legacy Park and City Hall, to handle flows from Legacy Park, Willow Creek, and the RISD school. The minimum required capacity for this lift station is 470 gpm in order to maintain a velocity of 3 fps in an 8-inch force main, which exceeds the calculated peak flow of 415 gpm.

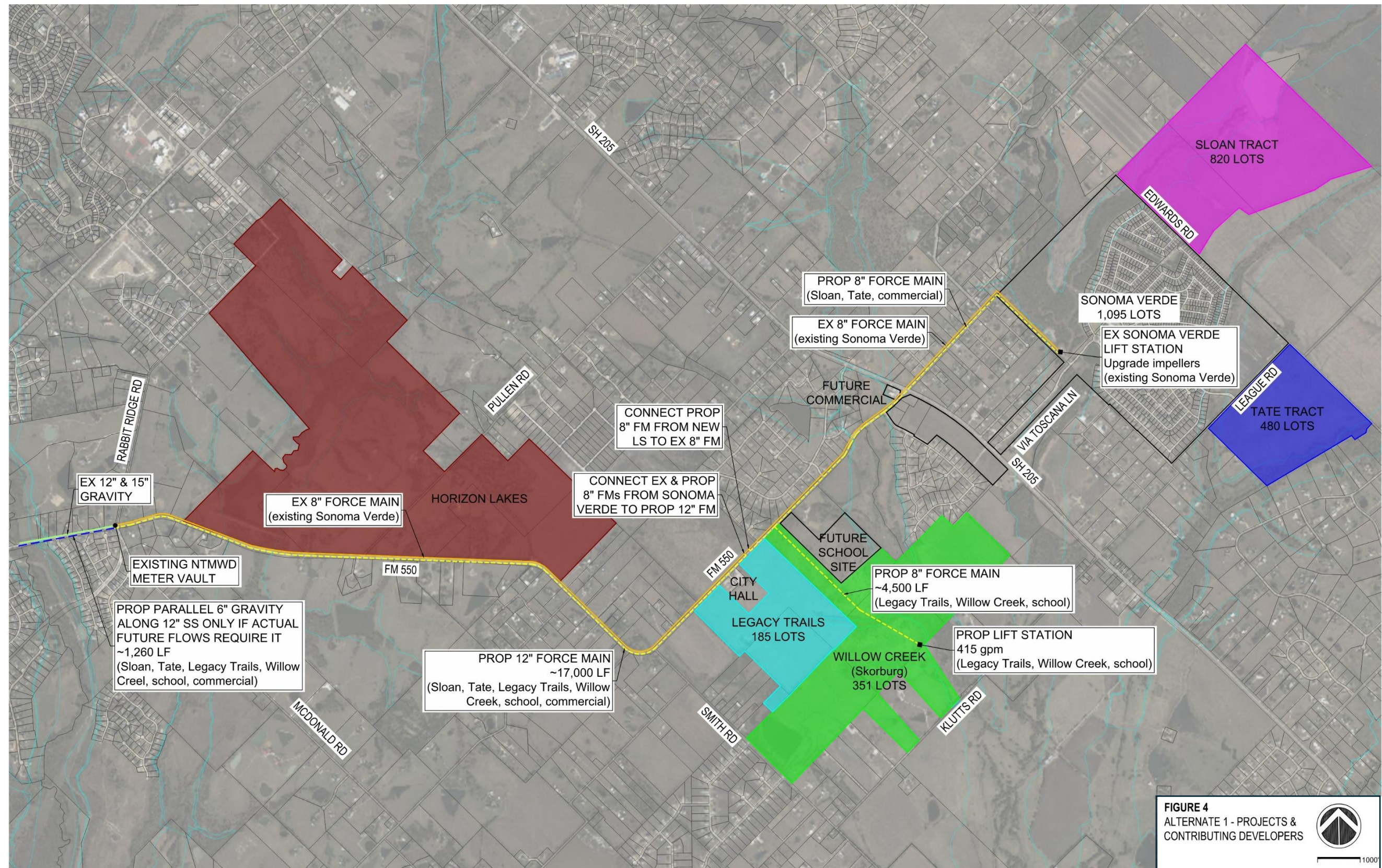
Note: One critical issue is the timing of the projects, which may prevent this plan from proceeding as outlined. Sloan, Tate, and Legacy Park tracts have an approved preliminary plat and property ownership, so construction will proceed sooner than Willow Creek. The Willow Creek developer may not be able to commit to granting easements and financial support within the timeframe the other require and specifically if there proposed plan is not approved by City Council. An alternative to this location would be to construct a temporary lift station on the Legacy Park property and have the Willow Creek property developed with a lift station based on their schedule. The Legacy Park LS would be eliminated and a gravity sewer continued south to the new lift station on the Willow Creek property.

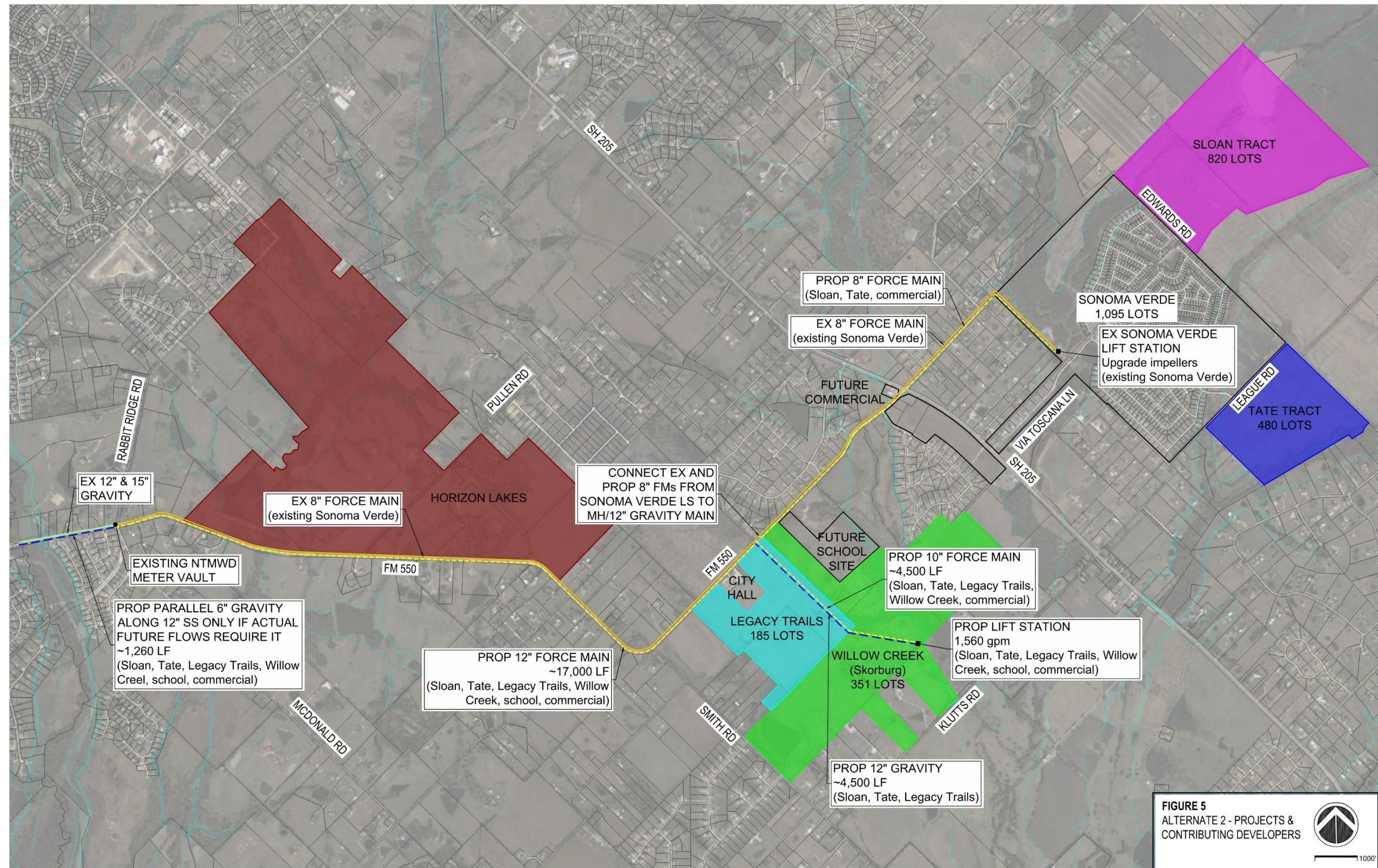
- D. Construct an 8-inch force main from the new lift station and connect it to the existing 8-inch force main near City Hall.
- E. Pig launching and receiving stations should be considered to ensure the force main does not have debris settling due to short run times that will likely result.
- F. Construct a new parallel 12-inch force main from the City Hall area to the NTMWD meter vault. This will connect to the two 8-inch force mains from the Sonoma Verde LS and provide additional capacity above the minimum required to meet 1,115 gpm demand, reduce friction head loss, and align with the performance curves of the existing pumps.
- G. Rather than initially construct a parallel 6-inch gravity sewer along the section determined be on 0.95%, it is recommended to defer the construction and evaluate actual flows over a long





period of time as houses are constructed. Based on the theoretical calculation of peak flow as shown in Table 2, the existing pipelines can accommodate the flow for over 4,000 homes. With the required lift station and force main improvements and meter installations, this will provide data on a long-term basis that can be evaluated to determine the actual future average daily flows and peak flows that occur. A decision can be made years later as to the actual required improvements. Additionally, if the City is approached by additional developers and agrees to allow sewer flow into the system, this could impact the required capacity of the gravity sewers. Therefore, it seems prudent to monitor and evaluate the system long-term prior to deciding on construction now.







9.0 Future Development Projects

The current Comprehensive Plan adopted by City Council in 2021 includes areas referred to as “Master Planned Communities” which are currently open areas that could be developed for residential or commercial uses. There are also roadway expansions identified within the Thoroughfare Plan that could impact how properties develop. However, as stated in the current Comprehensive Plan, residential lots less than 1 acre in size are not allowed. Therefore, exemptions to the Comprehensive Plan are required or the creation of Planned Developments in order to develop higher density residential developments. The active developments reviewed in this report required such exceptions to the City’s Plan and allowed development atypical for McLendon-Chisholm. Therefore, without known exceptions to the minimum lot size, future residential developments outside of the developments identified in this report will require on-site septic systems.

It is understood there is no known plan to change the 1-acre minimum lot requirement currently identified in the Comprehensive Plan. Therefore, predicting which areas may be granted lot size exceptions for higher density development in the future is uncertain, creating numerous potential options for providing wastewater service throughout the city. The best approach is likely to evaluate the most cost-effective option for additional wastewater service as City Council considers approval of new Planned Developments or changes are made to the Comprehensive Plan such that system improvements could be better identified. It would be prudent to review and update the Wastewater Masterplan every five (5) years or upon revisions to the Comprehensive Plan changing the 1-acre minimum lot size. Additionally, any consideration for a large higher-density future development will initiate assessment of how the property will be served.

To summarize general options that may be available in the future, FMI has considered the following:

- a. If higher density development is approved south of the Willow Creek property (or in areas that could gravity flow to the south), a future lift station could be viable south of the proposed lift station on the Willow Creek property shown in the recommended immediate improvements. The geography generally allows for gravity sewer flow towards the south, making this feasible.
- b. Similar to Item A, an additional lift station or stations could be constructed, serving specific areas developed and pump wastewater to the NTMWD Buffalo Creek Sewer Interceptor at either the same or different connection points. This would require negotiations with NTMWD and the City of Rockwall to accommodate new connections and potentially revise the contract regarding the allowable wastewater flow into the NTMWD interceptor.
- c. There is an existing permit approved by TCEQ for a wastewater treatment plant near the intersection of FM 548 and Mann Road. Although this was permitted specifically for development in that area, it may be possible to revise the permitted capacity and have a cost share opportunity for operation and maintenance (O&M) of the plant.



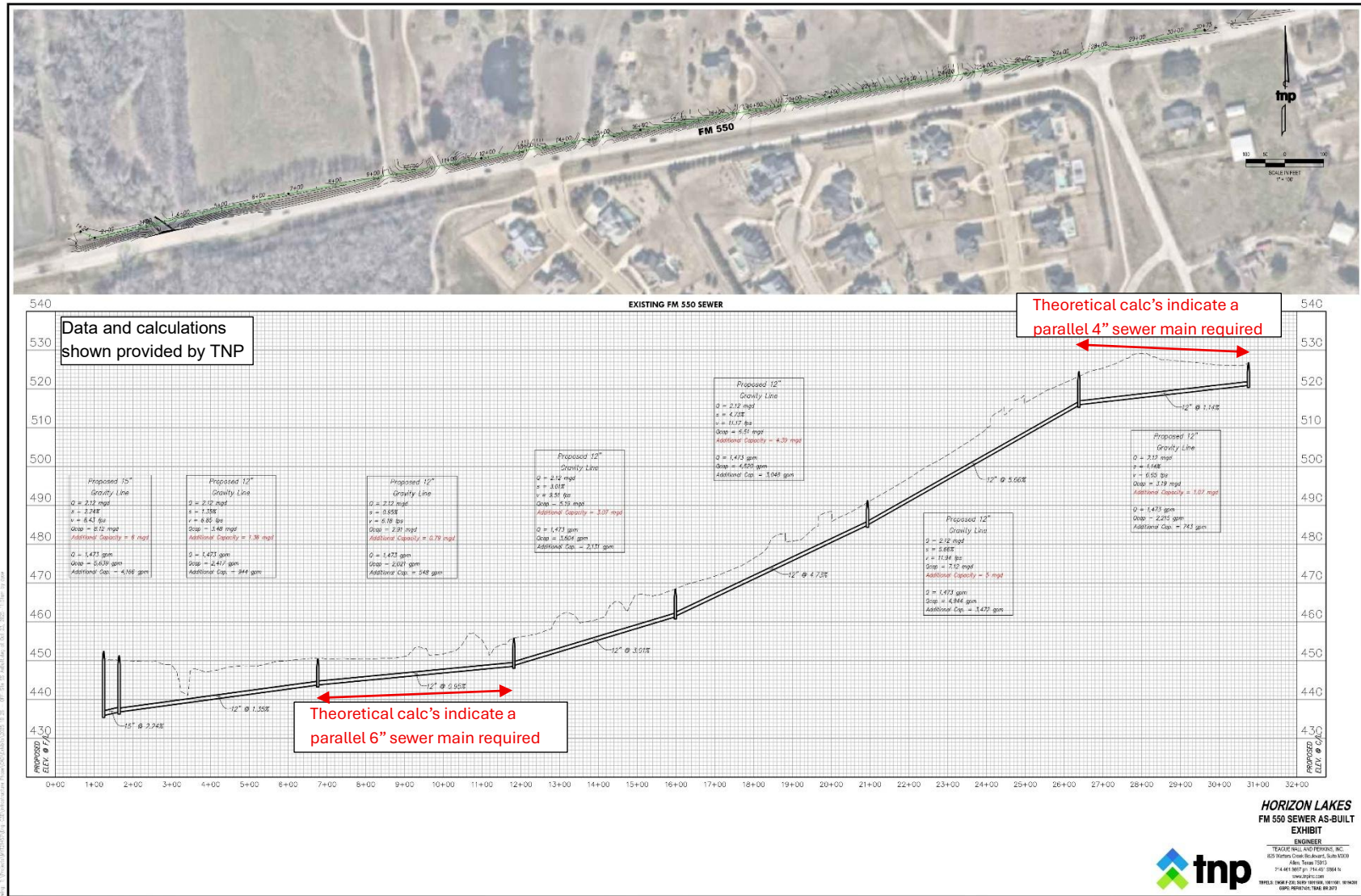


- d. There is also a permitted wastewater plant northeast of the areas served in this report which was approved for the D.R. Horton River Rock development. As with Item B, it may be possible to pump sewage in a direction opposite to the current configuration, increase the permitted capacity of the future wastewater treatment plant, and have a cost sharing agreement with another developer.



APPENDIX A
EXISTING GRAVITY SEWER DOWNSTREAM OF FORCE MAIN
AND
REQUIRED IMPROVEMENTS





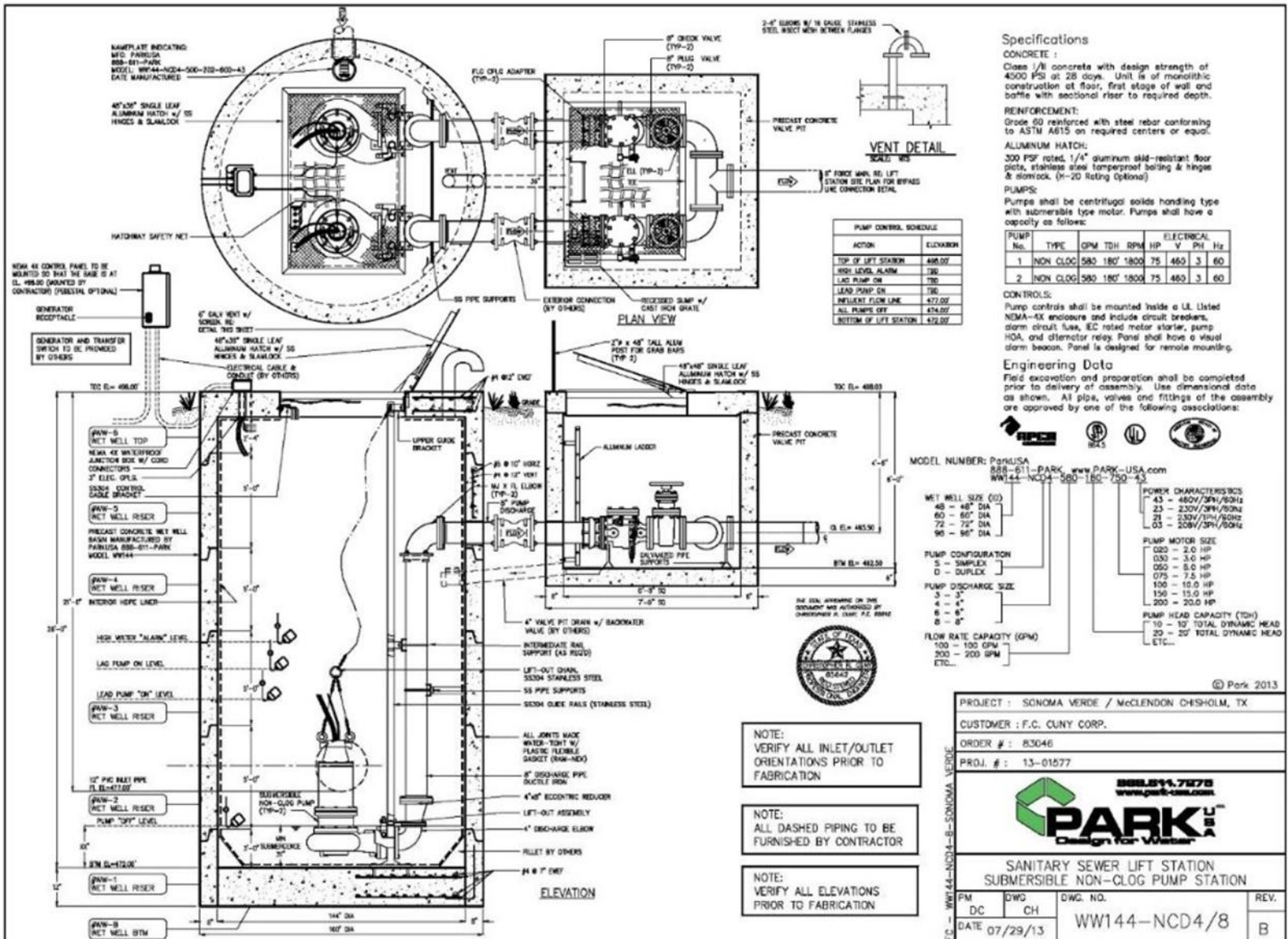


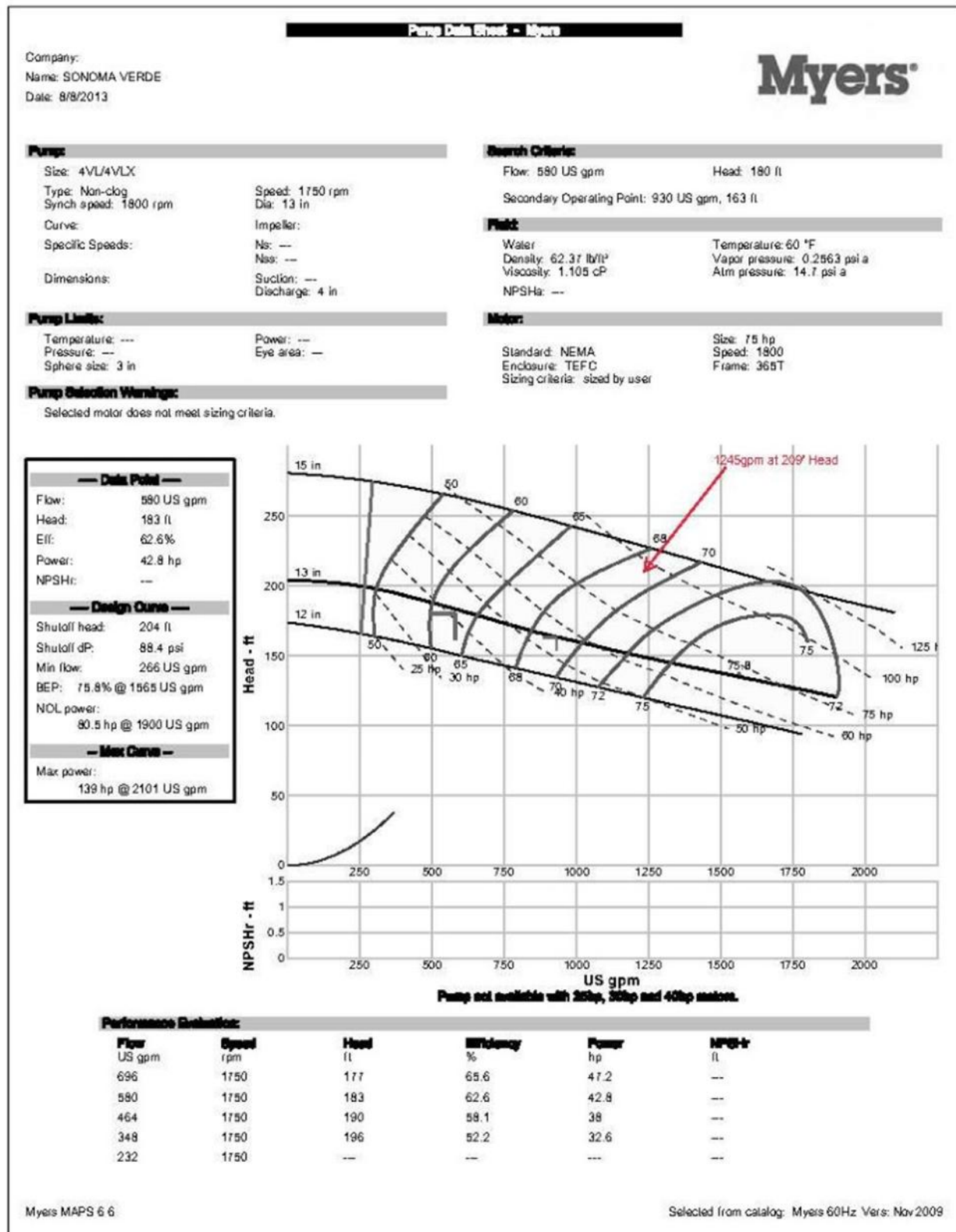
APPENDIX B

EXISTING SONOMA VERDE LIFT STATION











APPENDIX C

OPINION OF CONSTRUCTION COSTS





Alternate 1 and 2
OPCC - Parallel 8" Force Main from Existing Sonoma Verde LS to City Hall Area

Item	Description	No. of Units	Units	Unit Cost	Total Cost
1	Mobilization	1	EA	\$60,000.00	\$ 60,000.00
2	8" PVC Force Main by Open Cut	10000	LF	\$55.00	\$ 550,000.00
3	8" PVC Force Main by Bore with Encasement	200	LF	\$350.00	\$ 70,000.00
4	8" PVC Force Main by Bore without Encasement	200	LF	\$210.00	\$ 42,000.00
5	8" Valve	2	EA	\$3,820.00	\$ 7,640.00
6	Ductile Iron Fittings	3	Tons	\$8,500.00	\$ 25,500.00
7	Pavement Relacement	30	SY	\$250.00	\$ 7,500.00
8	Sodding/Seeding	4500	SY	\$6.00	\$ 27,000.00
9	Crush Stone for Trench Stability	100	CY	\$100.00	\$ 10,000.00
10	Trench Safety	10000	LF	\$1.00	\$ 10,000.00
11	SWPPP	1	LS	\$25,000.00	\$ 25,000.00
	Subtotal				\$834,640
	Project Contingency and Engineering (25%)				\$208,660
	Total Probable Construction Cost				\$1,043,300

Assumes main can be built parallel to existing main within TxDOT ROW.

Costs are based on an estimate provided by Double R contractor and assumes the City is not responsible for bidding the project.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J.FREEMAN, P.E. NO. 29907 ON SEPT 11, 2025





Alternate 1 and 2
Sonoma Verde - Downstream Parallel 6 Inch Gravity Sewer on FM 550
Engineer's Estimate of Probable Construction Cost

Item	Description	No. of Units	Units	Unit Cost	Total Cost
1	Mobilization	1	EA	\$10,000	\$ 10,000.00
2	6" PVC Gravity Sewer by Open Cut	500	LF	\$65	\$ 32,500.00
3	6" PVC Gravity Sewer by Bore with Encasement	100	LF	\$300	\$ 30,000.00
4	Fence Repair	1	LS	\$2,500	\$ 2,500.00
5	Connections to Existing Manholes	2	EA	\$4,000	\$ 8,000.00
6	Crush Stone for Trench Stability	20	CY	\$100	\$ 2,000.00
7	Trench Safety	500	LF	\$4	\$ 2,000.00
8	SWPPP	1	LS	\$7,500	\$ 7,500.00
9	Traffic Control	1	LS	\$5,000	\$ 5,000.00
	Subtotal				\$ 99,500.00
	Project Contingency and Engineering (30%)				33,600.00
	Total Probable Cost				\$ 133,100.00

Note: Assumes parallel 6 inch gravity sewer is constructed adjacent to the sections of existing 12" on 0.95%

Assumes main can be built within Developer's Property and then crossing TxDOT ROW. Cost of obtaining easements not included.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J.FREEMAN, P.E. NO. 29907 ON NOVEMBER 4, 2025





Alternate 1
New Lift Station - 470 gpm Opinion of Probable Construction Cost

Item	Description	No. of Units	Units	Unit Cost	Total Cost
1	Mobilization	1	EA	\$50,000	\$50,000
2	Furnish and Install New Lift Station	1	EA.	\$200,000	\$200,000
3	Furnish and Install Meter Vault and Valves	1	L.F.	\$15,000	\$15,000
4	Install and Furnish 8" Plug Valve	2	EA.	\$4,000	\$8,000
5	Install and Furnish 8" Check Valve	2	EA.	\$4,000	\$8,000
6	8" Couplings and Thrust Harnesses	2	EA.	\$7,500	\$15,000
7	Discharge Header Piping and Fittings	1	L.S.	\$12,000	\$12,000
8	Install and Furnish WINCH Crane and Hoist	1	EA.	\$15,000	\$15,000
9	Connection to Wet Well	2	EA	\$4,000	\$8,000
10	Access Road	1	L.S.	\$50,000	\$50,000
11	Structural Excavation	80	C.Y.	\$100	\$8,000
12	Dewatering and Shoring	1	L.S.	\$20,000	\$20,000
13	Waterproofing	600	S.F.	\$15	\$9,000
14	Painting	1	L.S.	\$20,000	\$20,000
15	Construct Valve Vault	1	L.S.	\$10,000	\$10,000
16	Construct Concrete Sidewalks	20	S.Y.	\$150	\$3,000
17	Furnish and Install Gravel Areas	100	S.Y.	\$40	\$4,000
18	Hatches and Miscellaneous Metals	1	L.S.	\$15,000	\$15,000
19	Electrical & Instrumentation	1	L.S.	\$60,000	\$60,000
20	Fence & Landscaping	1	L.S.	\$15,000	\$15,000
21	Generator and Foundation	1	L.S.	\$70,000	\$70,000
22	Seeding	1	L.S.	\$5,000	\$5,000
23	SWPPP	1	L.S.	\$10,000	\$10,000
Subtotal					\$630,000
Project Contingency and Engineering (20%)					\$126,000
Total Probable Project Cost					\$756,000

Assumes the new lift station is built on the proposed Skorburg Property and no easement costs are required.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J.FREEMAN, P.E. NO. 29907 ON SEPT 11, 2025





Alternate 1
OPCC - 8 Inch Force Main From New Lift Station to FM 550

Item	Description	Estimated Quantity	Unit	Unit Price	Extended Cost
1	Mobilization, Bonds, Insurance	1	LS	\$40,000	\$40,000
2	8 Inch Force Main	4,500	LF	\$55	\$247,500
3	Bore Road/Driveways	100	LF	\$350	\$35,000
4	Trench Safety	4,500	LF	\$2	\$9,000
5	Connect to Prop 8" FM and existing 8" FM	1	LS	\$5,000	\$5,000
6	Fittings and Valves	1	LS	\$20,000	\$20,000
	Subtotal Construction				\$356,500
	Engineering & Contingency			25%	\$89,125
	Total Estimated Cost				\$445,625

Assumes main can be built parallel to gravity sewer through the Legacy Tract. Cost of obtaining easements not included.

Costs are based on an estimate provided by Double R contractor and assumes the City is not responsible for bidding the project.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J. FREEMAN, P.E. NO. 29907 ON SEPT 11, 2025





Alternate 1
New 12" Force Main along FM550 from City Hall Area to NTMWD Meter Vault
Engineer's Estimate of Probable Construction Cost

Item	Description	No. of Units	Units	Unit Cost	Total Cost
1	Mobilization, Bonds, Insurance	1	EA	\$80,000	\$ 80,000.00
2	12" PVC Force Main by Open Cut	17000	LF	\$80	\$ 1,360,000.00
3	12" PVC Force Main by Bore with Encasement	200	LF	\$350	\$ 70,000.00
4	12" PVC Force Main by Bore without Encasement	200	LF	\$200	\$ 40,000.00
5	12" Valve	2	EA	\$5,940	\$ 11,880.00
6	Ductile Iron Fittings	8	Tons	\$8,500	\$ 68,000.00
7	Pavement Relacement	70	SY	\$250	\$ 17,500.00
8	Air Relief Valves	2	EA	\$10,000	\$ 20,000.00
9	Fence Repair	1	LS	\$30,000	\$ 30,000.00
10	Water Service Repair	5	EA	\$1,500	\$ 7,500.00
11	Sodding/Seeding	12000	SY	\$6	\$ 72,000.00
12	Crush Stone for Trench Stability	50	CY	\$100	\$ 5,000.00
13	Trench Safety	17000	LF	\$1	\$ 17,000.00
14	SWPPP	1	LS	\$15,000	\$ 15,000.00
	Subtotal				\$1,813,880
	Project Contingency and Engineering	25%			\$453,470
	Total Probable Construction Cost				\$2,267,350

Assumes main can be built parallel to existing main within TxDOT ROW.

Costs are based on an estimate provided by Double R contractor and assumes the City is not responsible for bidding the project.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J.FREEMAN, P.E. NO. 29907 ON SEPT 11, 2025





**Alternate 2
New Lift Station - 1560 gpm Opinion of Probable Construction Cost**

Item	Description	No. of Units	Units	Unit Cost	Total Cost
1	Furnish and Install New Lift Station	1	EA.	\$500,000	\$500,000
2	Furnish and Install Meter Vault and Valves	1	L.F.	\$20,000	\$20,000
3	Install and Furnish 10" Plug Valve	2	EA.	\$5,000	\$10,000
4	Install and Furnish 10" Check Valve	2	EA.	\$5,000	\$10,000
5	10" Couplings and Thrust Harnesses	2	EA.	\$20,000	\$40,000
6	Fittings	1	EA.	\$15,000	\$15,000
7	Discharge Header Piping and Fittings	1	L.S.	\$50,000	\$50,000
8	Install and Furnish WINCH Crane and Hoist System	1	EA.	\$20,000	\$20,000
9	Connection to Wet Well	2	EA.	\$4,000	\$8,000
10	Access Road	1	L.S.	\$20,000	\$20,000
11	Structural Excavation	100	C.Y.	\$100	\$10,000
12	Dewatering and Shoring	1	L.S.	\$25,000	\$25,000
13	Waterproofing	800	S.F.	\$15	\$12,000
14	Painting	1	L.S.	\$25,000	\$25,000
15	Construct Valve Vault	1	L.S.	\$15,000	\$15,000
16	Construct Concrete Sidewalks	20	S.Y.	\$150	\$3,000
17	Furnish and Install Gravel Areas	100	S.Y.	\$40	\$4,000
18	Hatches and Miscellaneous Metals	1	L.S.	\$30,000	\$30,000
19	Electrical & Instrumentation	1	L.S.	\$100,000	\$100,000
20	Fence & Landscaping	1	L.S.	\$20,000	\$20,000
21	Generator and Foundation	1	L.S.	\$125,000	\$125,000
22	Seeding	1	L.S.	\$5,000	\$5,000
23	SWPPP	1	L.S.	\$15,000	\$15,000
Subtotal					\$1,082,000
Project Contingency and Engineering (25%)					\$270,500
Total Probable Project Cost					\$1,352,500

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J.FREEMAN, P.E. NO. 29907 ON JUNE 26, 2025





Alternate 2
Gravity Sewer - FM 550 to New Lift Station
Engineer's Estimate of Probable Construction Cost

Item	Description	Estimated Quantity	Units	Unit Cost	Total Cost
1	Mobilization	1	EA	\$60,000	\$ 60,000.00
2	12" PVC Gravity Sewer	4500	LF	\$100	\$ 450,000.00
3	12" PVC Force Main by Bore with Encasement	100	LF	\$500	\$ 50,000.00
4	Manhole	8	EA	\$10,000	\$ 80,000.00
5	Temporary Gravel Road	1	EA	\$20,000	\$ 20,000.00
6	Sodding	200	SY	\$10	\$ 2,000.00
7	Crush Stone for Trench Stability	40	CY	\$100	\$ 4,000.00
8	Trench Safety	4500	LF	\$3	\$ 13,500.00
9	SWPPP	1	LS	\$15,000	\$ 15,000.00
	Subtotal				\$694,500
	Project Contingency and Engineering (30%)				\$208,350
	Total Probable Construction Cost				\$902,850

Assumes main is built through Developer's property. Easement costs are not included.

Costs are based on an estimate provided by Double R contractor and assumes the City is not responsible for bidding the project.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J. FREEMAN, P.E. NO. 29907 ON SEPTEMBER 11, 2025





Alternate 2
OPCC - 10 Inch Force Main From New LS to FM 550

Item	Description	Estimated Quantity	Unit	Unit Price	Extended Cost
1	Mobilization, Bonds, Insurance	1	LS	\$50,000	\$50,000
2	10 Inch Force Main	4,500	LF	\$75	\$337,500
3	10 Inch Valve	4	Each	\$10,000	\$40,000
4	Trench Safety	4,500	LF	\$3	\$13,500
5	Connect to Existing 8" FM	1	LS	\$5,000	\$5,000
6	Bore FM 550 with encasement	100	LF	\$500	\$50,000
	Subtotal Construction				\$496,000
	Engineering & Contingency			25%	\$111,500
	Total Estimated Cost				\$607,500

Assumes main can be built within Developer's Property and then crossing TxDOT ROW. Cost of obtaining easements not included.

Costs are based on an estimate provided by Double R contractor and assumes the City is not responsible for bidding the project.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J.FREEMAN, P.E. NO. 29907 ON SEPTEMBER 11, 2025





Alternate 2
OPCC - 10 Inch Force Main Along FM 550 from City Hall Area to NTMWD Meter Vault

Item	Description	Estimated Quantity	Unit	Unit Price	Extended Cost
1	Mobilization, Bonds, Insurance	1	LS	\$80,000	\$80,000
2	10 Inch Force Main	17,000	LF	\$75	\$1,275,000
3	10 Inch Valve	4	Each	\$7,500	\$30,000
4	Bore Road/Driveways	200	LF	\$300	\$60,000
5	Trench Safety	17,000	LF	\$3	\$51,000
6	Connect to Downstream MH	1	LS	\$4,000	\$4,000
7	Remove and Replace Driveways	140	SY	\$200	\$28,000
	Subtotal Construction				\$1,528,000
	Engineering & Contingency (25%)				\$375,000
	Total Estimated Cost				\$1,903,000

Assumes main can be built within TxDOT ROW along FM 550. Cost of obtaining easements not included.

Costs are based on an estimate provided by Double R contractor and assumes the City is not responsible for bidding the project.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
LARRY J.FREEMAN, P.E. NO. 29907 ON SEPTEMBER 11, 2025





Wastewater Masterplan Report

CITY OF McLENDON-CHISHOLM
JANUARY 13, 2026
CITY COUNCIL MEETING

Introduction

- ◆ Freeman-Millican, Inc (FMI) was requested by City Staff to provide a proposal to complete a Wastewater Masterplan
- ◆ This decision was determined in part due to FMI's history with the Sonoma Verde development, having completed a study in 2013 to initially size a lift station and force main
- ◆ The study was driven by multiple developers having received or were seeking approval for higher-density residential development (< 1 acre lots), requiring connection to the City's wastewater system
- ◆ Discussions were completed in conjunction with the City's Engineer, Douphrate & Associates, Inc., who supported the project

Development and Existing System

- ◆ The Sonoma Verde development was approved by City Council in 2012-2013 and has completed construction of the initial phases
- ◆ Development included constructing the existing Sonoma Verde Lift Station and an 8 inch force main along FM 550
- ◆ The force main discharges into a gravity main which connects to the North Texas Municipal Water District (NTMWD) 42 inch Buffalo Creek Interceptor

Existing System Map

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FIGURE 3
EXISTING WASTEWATER
SYSTEM

Wastewater Contract

- ◆ NTMWD contracts with 3 other cities for wastewater flow into the Buffalo Creek Interceptor:
 - ◆ Rockwall
 - ◆ Heath
 - ◆ Forney
- ◆ McLendon-Chisholm's contract is actually with the City of Rockwall to allow up to 3.7 million gallons of wastewater into the NTMWD system
- ◆ Review of the planned developments indicated no revisions to the current contract are required.

Planned Developments

- ◆ Sonoma Verde North (Sloan Tract)
- ◆ Sonoma Verde East (Tate Tract)
- ◆ Legacy Trails (Altura Homes)
- ◆ Willow Creek (Skorburg)
- ◆ Future School
- ◆ Commercial

Planned Developments



Number of Connections

DEVELOPMENT	EQUIVALENT NO. OF LOTS
Sonoma Verde (Existing)	1,095
Sonoma Verde North	675
Sonoma Verde East	370
Commercial	15
Future RISD school	65
Legacy Park	185
Willow Creek (Skorburg)	414
Horizon Lakes	1,750
TOTAL	4,567

Projected Flow

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DEVELOPMENT	NUMBER OF CONNECTIONS	AVERAGE DAILY FLOW PER CONNECTION (GPD)	AVERAGE DAILY FLOW (GPM)	PEAK FLOW (GPM)
Sonoma Verde	1095	240	183	566
Sonoma Verde North	675	240	113	349
Sonoma Verde East	370	240	62	191
Commercial	15	240	2.5	8
Future school	65	240	11	43
Legacy Park	183	240	31	122
Willow Creek	414	240	69	276
Horizon Lakes **	1,750	240	292	1,167
TOTAL	4,567		761	2,721

Comments on Projected Flow

- ◆ Flows for Existing Sonoma Verde and Commercial served were monitored and determined to have a 3.1:1 peaking factor. This was used for Sonoma Verde and Commercial areas in determining peak flows
- ◆ Horizon Lakes, Legacy Trails, Willow Creek and Future School used 4:1 peaking factor
- ◆ Horizon Lakes development does not impact the analysis for new force mains and lift stations. A separate lift station/FM serves the property and connects to gravity mains

What the Analysis Revealed...

- ◆ Existing Sonoma Verde Lift Station and Force Main was inadequate to handle growth from new Sonoma Verde North and East phases and Commercial
- ◆ Proposed Legacy Trails and Willow Creek developments require a new lift station
- ◆ Existing gravity mains had more capacity than initially believed from the record drawings. A field survey indicated pipes were built on a steeper slope than designed

Alternatives Reviewed

◆ Alternate 1:

- ◆ Construct a new 8 inch force main parallel to the existing 8 inch force main from the existing Sonoma Verde LS to near City Hall (10,000 ft)
- ◆ Construct a new 12 inch force main parallel to the existing 8 inch force main from City Hall to gravity mains (17,000 ft). The two (2) parallel 8" force mains would connect to the new 12" force main and serve Sonoma Verde properties and Commercial.
- ◆ Construct a new 415 gpm lift station and 8" force main in Willow Creek Development and connect it to the existing 8" force main
- ◆ Upsize pump impellers in the existing Sonoma Verde Lift Station

Alternate 1

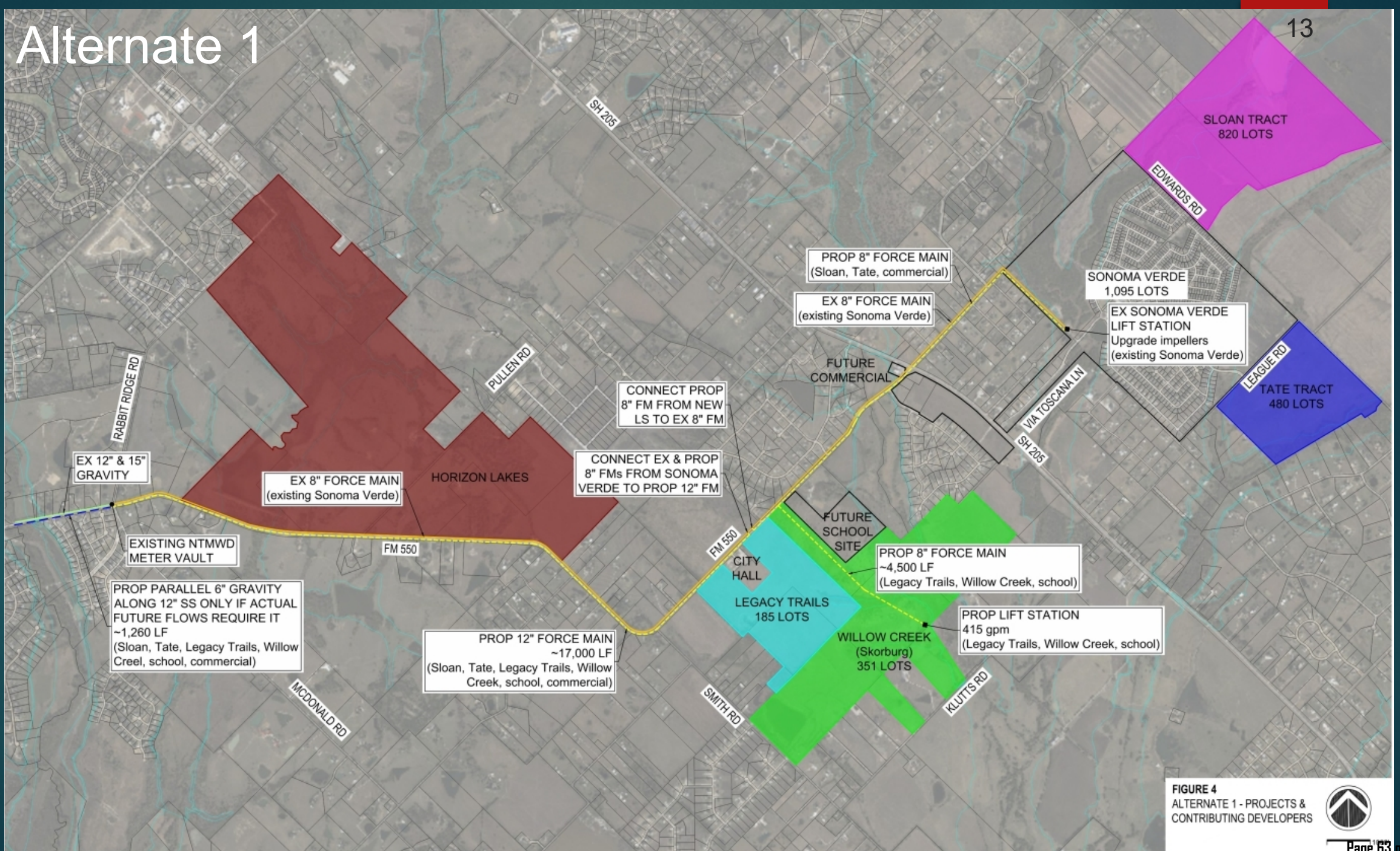


FIGURE 4
ALTERNATE 1 - PROJECTS & CONTRIBUTING DEVELOPERS



Alternatives Reviewed

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◆ Alternate 2:

- ◆ Construct a new 8 inch force main parallel to the existing 8 inch force main from existing Sonoma Verde LS to near City Hall (10,000 ft)
- ◆ Connect the two 8" force mains to a new 12" gravity main (4,500 ft) from FM 550 to a new lift station
- ◆ Construct a 1,560 gpm lift station in the Willow Creek Development and new 10" force main (21,500 ft) to the gravity sewers
- ◆ Upsize pump impellers in the existing Sonoma Verde Lift Station

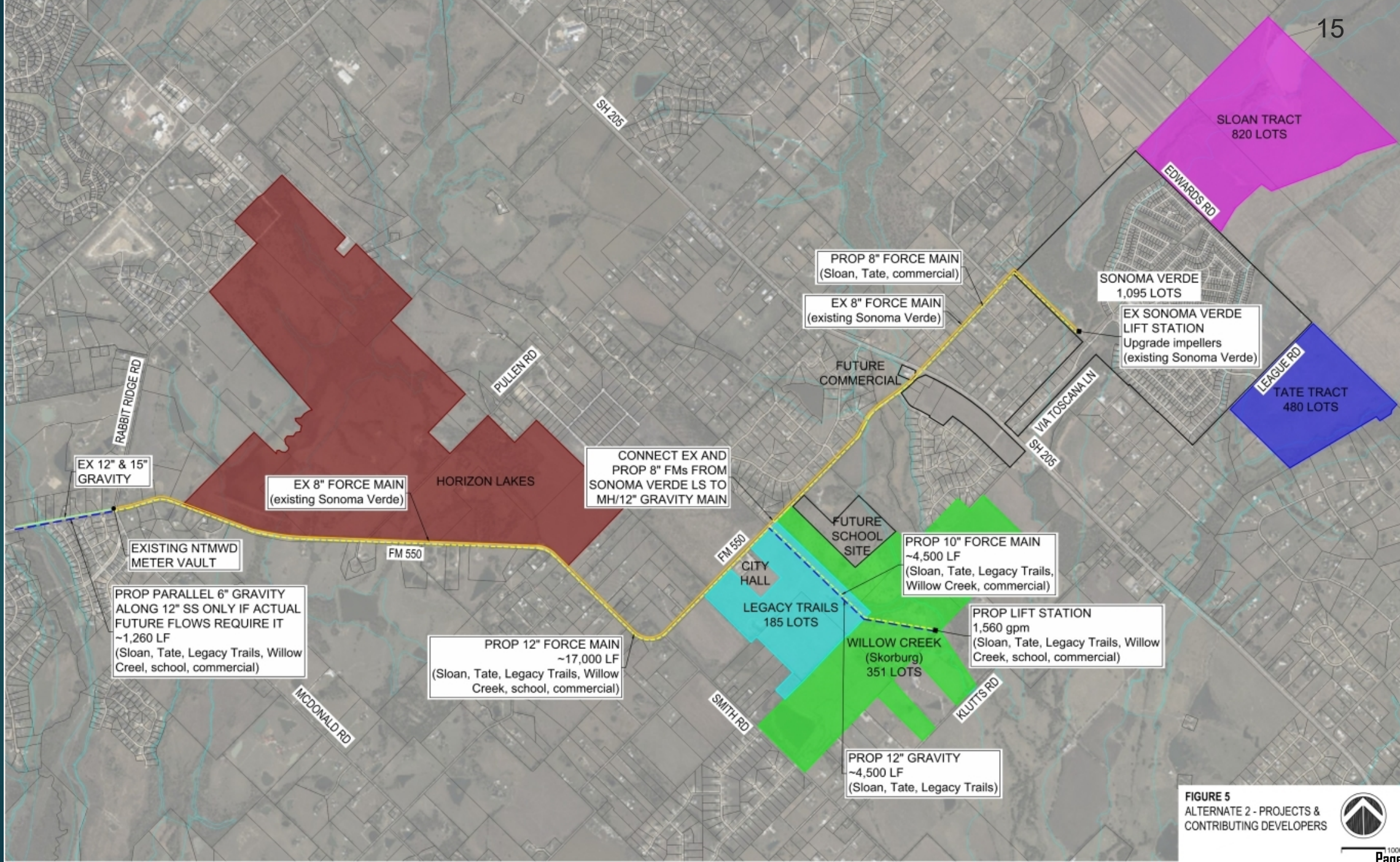


FIGURE 5
ALTERNATE 2 - PROJECTS &
CONTRIBUTING DEVELOPERS



Alternate 1	Cost Estimate	Alternate 2	Cost Estimate
Parallel 8-inch FM to school	\$1,043,300	Parallel 8-inch FM to school	\$1,043,300
New lift station	\$756,000	New lift station	\$1,352,500
New 8-inch FM, new LS to FM 550	\$445,625	Gravity sewer from FM 550 to new lift station (4,500 LF)	\$902,850
Upgrade existing. Sonoma Verde pump impellers	\$75,000	New 10-inch FM, new LS to FM 550 (4,500 lf)	\$607,500
Parallel 12-inch FM from school to NT (17,000 LF)	\$2,267,350	Upgrade existing Sonoma Verde pump impellers	\$75,000
Downstream gravity sewer, 6-inch Parallel (500 LF)	\$133,100	Parallel 10-inch FM from school to NT (17,000 LF)	\$1,903,000
		Downstream gravity sewer, 6-inch Parallel (500 LF) – See Note 2	\$133,100
Total Cost	\$4,720,375	Total Cost	\$6,017,260

Recommended Solution

- ◆ Alternate 1 –
 - ◆ Construct a parallel the existing 8 inch force main from existing Sonoma Verde LS to near City Hall (10,000 ft)
 - ◆ Construct a parallel 12 inch force main from City Hall to gravity mains (17,000 ft). The two (2) parallel 8" force mains would connect to the new 12" force main and serve Sonoma Verde properties and Commercial.
 - ◆ Construct a new 415 gpm LS in Willow Creek Development and connect it to the existing 8" force main
- ◆ Gravity Mains - Based on the information obtained on the actual gravity main slopes, there is adequate capacity to serve over 4,000 lots. Recommend monitoring flows as development occurs and determine when / if a parallel main is required

Collaboration and Funding

- ◆ Numerous meetings were held with the following:
 - ◆ City Staff
 - ◆ Douphrate & Associates, Inc.
 - ◆ Taylor Duncan, Inc. (now Taylor-Davis Interests, LLC)
 - ◆ Skorborg
 - ◆ Teague Nall & Perkins
- ◆ Consensus among the key players results in supporting the recommended plan to serve the areas
- ◆ Funding: Projects are developer-funded (other than reimbursements from the City based on connection fees in accordance with developer agreements)

Comprehensive Plan

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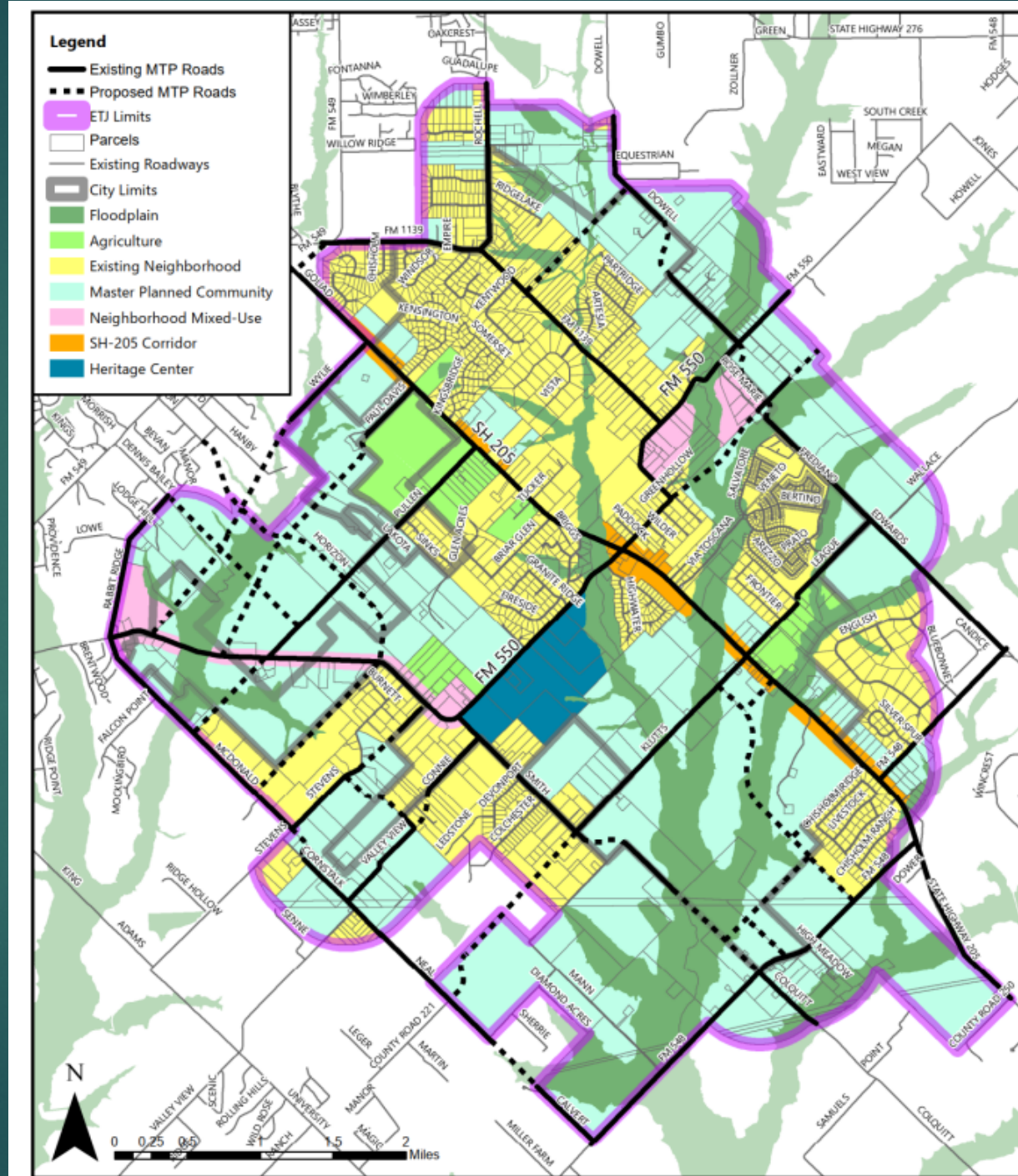
- ◆ Current Comprehensive Plan adopted by City Council in 2021
- ◆ Residential lots less than 1 acre in size are not allowed
- ◆ Requires an exception to develop higher density residential lots
- ◆ It is understood there is not a plan currently to change the 1-acre minimum lot requirement

Future Land Use Goals

- ◆ “Allow for a strategic, branded, and low-intensity mixture of uses in undeveloped areas to allow the market to innovate and to diversify the tax base, realizing there are many ways to get a rural/country feel with future development”
- ◆ “Developing compatibly with surrounding development and in a manner responsive to market needs while putting current residents first.”

Future Land Use Plan

◆ “Master Planned Community”



Future Wastewater System Improvements

- ◆ Because of the 1-Acre minimum lot requirement, it seems premature to speculate on specific future improvements without knowing locations of proposed development or assumptions on land-use and density that may be approved
- ◆ General possibilities:
 - ◆ Terrain generally allows for gravity mains to take wastewater to the south end of the service area
 - ◆ Installing a large lift station could serve numerous developments and a new force main could possibly connect to the NTMWD interceptor at a new connection point
 - ◆ Permitted wastewater treatment facility located near FM 548 and Mann Road. Possibly have a joint O&M agreement for serving a portion of McLendon-Chisholm service area.

Wastewater Masterplan Updates

- ◆ Note that the recommended projects will support these approved and planned developments. Buildout will likely take 10 to 15 years, servicing approximately 2,800 homes in approved developments.
- ◆ Recommendation is to review the need for an update:
 - ◆ Every 5 years, or
 - ◆ In the event there is a significant development proposed, or
 - ◆ There is a significant change in the Future Land Use Plan and residential minimum lot size

Discussion

RESOLUTION NO. 2026 - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, ADOPTING A WASTEWATER MASTERPLAN; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE. PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Developers have initiated requests to City Staff and City Council regarding new residential developments; and

WHEREAS, after consideration and negotiations City Council approved agreements with developers granting exceptions to lot size and allowing connections to the City's wastewater system; and

WHEREAS, an evaluation was required to determine improvements which would increase efficacy in serving new developments; and

WHEREAS, in conjunction with discussions with the City Engineer, City staff requested a proposal from Freeman-Millican, Inc. to prepare a Wastewater Masterplan.

WHEREAS, the recommended improvements have been discussed and agreed to by various developers; and

WHEREAS, funding for the improvements shall be provided by Developers and the only financial impact to the City is agreed upon reimbursements from a portion of the fees collected for each lot.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF MCLENDON-CHISHOLM, TEXAS THAT:

SECTION 1. City Council hereby approves and adopts the Wastewater Masterplan outlining the recommended wastewater system improvements to serve the new developments.

SECTION 2. That all resolutions of the City of McLendon-Chisholm, Texas in conflict with the provisions of this resolution be and the same are hereby repealed and all other resolutions of the City of McLendon-Chisholm, Texas not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. If any section, article, paragraph, sentence, clause, phrase or word in this Resolution or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution, and the City Council hereby declares it would have passed such

remaining portions of this Resolution despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4. That this resolution shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

SECTION 5. That all recitals contained in this Resolution are fully incorporated herein as if fully written.

PASSED AND APPROVED THIS 13th DAY OF JANUARY, 2026

APPROVED:

Bryan McNeal, Mayor

ATTEST:

Angela Jennings, City Secretary



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Receive a presentation from Volkert, Inc regarding engineering services for a citywide roadway condition assessment and development of a Roadway Capital Improvement Plan.

Background:

On September 9, 2025, City Council directed staff to issue a Request for Qualifications (RFQ) seeking professional engineering services to evaluate roadway conditions within the City limits and to establish a Roadway Capital Improvement Plan (CIP). The intent of this effort is to provide City Council with a comprehensive, data-driven assessment of existing street conditions and a prioritized list of roadway improvement projects that may ultimately support consideration of a future road bond election.

The RFQ was issued on October 13, 2025, and advertised in the local newspapers in accordance with local and state procurement requirements. The solicitation closed on November 13, 2025, at which time the City received a total of five (5) statements of qualifications (Freeman-Millican, Halff, Kimley-Horn, Schaumburg & Polk, and Volkert). A staff-led review committee evaluated the submittals, shortlisted two firms for interviews, and conducted interviews to further assess qualifications. Based on this evaluation process, the committee identified Volkert, Inc. as the most qualified firm and recommends the firm to City Council for consideration.

Presenter: Fabrice Kabona, City Manager

THE CITY OF MCLENDON-CHISHOLM, TEXAS RFQ NO. 2025-13-10



REQUEST FOR QUALIFICATIONS FOR CIVIL ENGINEERING,
SURVEYING AND RELATED SERVICES FOR
AN OVERALL ROAD ASSESSMENT OF STREETS AND ROADS
IN THE CITY LIMITS

RFQ Issued: October 13, 2025

Submittal Deadline: November 13, 2025, prior to 4:00 p.m.

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I. ADVERTISEMENT

RFQ NO. 2025-6-10

REQUEST FOR QUALIFICATIONS FOR CIVIL ENGINEERING, SURVEYING AND RELATED SERVICES FOR AN OVERALL ROAD AND STREETS ASSESSMENT FOR THE CITY'S CAPITAL IMPROVEMENT PLAN DESIGN PROJECT

The City of McLendon-Chisholm, Texas is accepting qualifications for highly qualified, capable and experienced professional service firms to provide professional services for the overall road assessment of streets in the City for the City's Capital Improvement Plan. Sealed qualification packages shall be received by the City Manager located in the City Hall Building at 1371 West FM 550, McLendon-Chisholm, Texas 75032.

RFQ documents are available without charge at the City of McLendon-Chisholm 1371 West FM 550, McLendon-Chisholm, Texas 75032, as well as the City's website: www.mclendon-chisholm.com (at the bottom of the home page). It is the sole responsibility of all interested parties, whether they have received digital downloads or paper copies of the RFQ, to periodically check for addenda via the City's website.

All requests for additional information or clarification related to this RFQ must be submitted, in writing, no later than 5:00 p.m., Tuesday, November 11, 2025. All inquiries and/or questions concerning this project should be submitted to the person identified on the cover sheet of the Request for Qualifications.

II. PURPOSE OF THE RFQ

The City of McLendon-Chisholm, Texas (the "City") is seeking to enter into an engineering services contract with a state-registered engineering firm to provide assistance with an assessment of the streets and roads throughout the City for purposes of assisting with the City's preparation of its Capital Improvement Plan. The City of McLendon-Chisholm reserves the right to accept or reject any or all proposals for any reason deemed to be in the best interest of the City.

A. Scope of Work - The engineering contract will encompass all project-related engineering services for the City, including but not limited to the following:

1. Project Initiation and Coordination

- Conduct a project kickoff meeting with City staff to review objectives, data needs, and timelines.
- Develop a detailed project schedule, communication plan, and deliverables timeline.
- Coordinate regularly with City staff to review progress and preliminary findings.

2. Data Collection and Field Assessment

- Obtain mapping from various sources, which shall include but not be limited to: Streets, City limits, ETJ Limits, Parcels, Zoning, Existing and Proposed Subdivisions, Creeks/Streams, Thoroughfare Plan, Public Water Utilities, etc.
- Proposed Developments (Location, timeline to build, number of lots/density)
- Obtain existing City standards (Subdivision Ordinance, Engineering/Construction, Thoroughfare Plan, etc.)
- Identify and categorize attributes of the City's Roadways
 - Identify (Public or Private, City, TxDOT, County, or joint maintenance responsibility)
 - Identify the ultimate classification type of roadway per Thoroughfare plan (Highway, Arterial, Collector, or Local)
 - Identify existing material type (Asphalt w/ ditches, concrete w/ ditches, concrete curb and gutter, or other)
 - Other key metrics as determined by the City and Engineer that may affect cost or schedule of projects.
- Roadway pavement assessment
 - 2023 Nexco Pavement Condition Assessment (Provided by City)
 - Engineer to perform additional site visits in various locations of the original Nexco Pavement Assessment to see if conditions remain the same or have changed.
 - Identify additional streets not included in the 2023 Nexco Pavement Assessment and evaluate pavement condition and degree of pavement failure.
 - Conduct Average Daily Traffic (Bi-directional Counts) to determine the level of traffic.
 - Conduct Preliminary Meeting with City staff to determine staff priorities for the CIP, what metrics have a higher weight, and what roads on the City system have a current higher priority.

3. Roadway CIP Development

- Conduct meeting with the City to go over the City's Thoroughfare Plan and see what future proposed roadways shall be on the cities CIP list.

- Develop matrix of existing City Roadway attributes and other metrics that will be used for ranking the streets. Meet with the City to determine what metrics that are to be included in this matrix.
- Develop a List of Roadways to include in CIP. For each project, the following is anticipated to be prepared:
 - Purpose and need of each roadway project. This will be the justification why certain Roadways need to be included in the future bond.
 - Project limits.
 - Roadway classifications and typical cross sections.
 - Project constraints (i.e. major drainage items, ROW/easement acquisition, known utility relocations, permitting and other key items)
 - Project Type (New Build, Reconstruction, Large Scale Maintenance (Spot repairs, chip seal, etc.), small scale maintenance (crack sealing, etc.)
- Prepare a map of the streets to be included in the CIP.
- Develop schedule of the streets to be included in the CIP.
- Develop preliminary cost estimates for recommended road improvements for the CIP – costs shall include the following, if applicable:
 - Topo survey and ROW/easement survey
 - Geotechnical investigation and report
 - Schematic development
 - Environmental
 - ROW and easement acquisition services
 - Engineering plans and specifications
 - Construction
 - Construction administration and inspection
 - Other items that may affect cost.
- City roadway and drainage standards review
 - Review existing City standards and ordinances as it relate to roadways and determine if updates and revisions are required for implementation of Roadway CIP. Ultimately, this document will provide the City with an up-to-date Roadway system design standard for guidance with repairs/rebuilds of existing roadways and will provide proper guidance on new Roadways to ensure longevity of the new Roadway systems. Design standards, including but not limited to cross-sections, design standards based on speed limit & type of Roadway, and construction material standards, shall be reviewed as part of this task.
 - Review existing City standards and ordinances as it relate to drainage design and determine if updates and revisions are required for implementation of Roadway CIP. Compare the existing drainage design manual to current acceptable practices in the DFW area. Provide the City an up-to-date drainage design standards that will not have adverse effects on existing and future developments/private properties. Design standards, including but not limited to floodplain design, floodplain management (FEMA standards), detention requirements, closed storm sewer system design, open channel design, frequency of storms required for design, fully developed design standards, and acceptable modeling approaches, shall be reviewed as part of this task.
 - Conduct one (1) meeting with City staff, going over recommendations of Roadway CIP.
 - Make updates to Roadway CIP based on City staff meeting in preparation for P&Z and City Council meetings.
 - Planning and Zoning (P&Z) meetings:
 - Attend one (1) P&Z meeting to present results of roadway CIP.
 - Update roadway CIP as a result of input from P&Z in preparation for City Council meeting.
 - City Council meetings
 - Attend one (1) City Council Meeting to present Results of Roadway CIP.
 - Update roadway CIP as a result of input from the City Council.
 - Attend one (1) follow up City Council meeting to present changes to CIP based on City Council input.

- Other efforts as requested by the City for Roadway CIP development.
- Schedule
 - Engineer can begin this work within ten (10) business days following a Notice to Proceed (NTP) from the City. Engineer can produce and deliver the Roadway CIP and Standards within four (4) months in preparation for City Council and P&Z approval.

4. **Capital Improvement Plan Integration**

- Develop recommendations for inclusion in the City's Capital Improvement Plan (CIP).
- Provide documentation and summary tables suitable for inclusion in City Council presentations or public reports.
- Assist City staff in identifying potential funding sources (TxDOT programs, grants, etc.).

5. **Deliverables**

- Street condition assessment report summarizing findings, methodology, and results.
- GIS-based maps illustrating pavement condition and recommended improvements.
- Prioritized project list with estimated costs and phasing recommendations.
- Presentation of findings to City Council and P&Z.

B. Statement of Qualifications - The City is seeking to contract with a competent engineering firm, registered to practice in the State of Texas, which has had experience in the following areas:

- Experience with road and street assessments
- Experience with preparation for a city's capital improvement plan
- Projects located in this region of the state
- Projects incorporating design and construction of streets

As such, please provide within your proposal a list of past projects with contact information, as well as resumes of all engineers who will or may be assigned to this project, if you are awarded the engineering services contract.

C. Receipt of Proposals - If your firm is interested in being considered as the Engineer for the City, proposals must be received no later than 4:00 PM (local time) on November 13, 2025, at City Hall. One (1) copy of the proposal must be sealed and clearly marked on the face of the shipping material "Street Assessment MC CIP".

III. **SELECTION PROCESS**

The City anticipates selecting one (1) Firm to provide professional engineering services for the Streets and Roads Assessment Project.

A City staff–led Evaluation Panel will review each Firm's Statement of Qualifications ("SOQ"), verify references, and, at the City's discretion, conduct interviews with selected Firms to evaluate their qualifications and competence to perform the required services.

In accordance with the Texas Professional Services Procurement Act (TEX. GOV'T CODE § 2254.004) and the rules of the Texas Board of Professional Engineers and Land Surveyors (22 TEX. ADMIN. CODE § 137.53), no cost, price, or fee information shall be submitted or considered in the

initial phase of the selection process.

After evaluating the SOQs, the City will rank the Firms in order of demonstrated competence and qualifications. Negotiations will begin once the most highly qualified Firm is selected. If an agreement cannot be reached with that Firm, then negotiations may be initiated with the next most highly qualified Firm, and so on, until a satisfactory agreement is reached.

Firms will be notified by the City of the results of the qualification review and the final selection decision at the conclusion of the RFQ process.

IV. EVALUATION CRITERIA

The proposals received will be evaluated and ranked according to the following criteria:

A. Firm's Qualifications and Project References {20%}

Firm's Qualifications and relevant Project References, specifically as they relate to the project. Include three relevant project references related to this project and complete contact information for each reference.

B. Project Manager and Key Personnel Qualifications {45%}

Project Manager's Qualifications, specifically as they relate to the project. Include qualifications for all Key Personnel that will be assigned to the project. Qualifications and staff experience shall be limited to no more than five (5) years old. Also, the Firm's ability to manage the work based on the current and future project.

C. Quality Control/Quality Assurance Process {20%}

This criterion would describe and provide examples of Firm's processes for assuring accurate and timely work product for each project.

D. Past Work Performance {15%}

Provide a representative sample. The sample work shall be prepared by or under the supervision of the PM/POC provided in this RFQ. i.e. Roadway plan and profile sheet for a road reconstruction type project, or a material testing report for construction materials testing, etc. These projects should be listed under "Sample of Work".

V. ADDITIONAL INSTRUCTIONS, NOTIFICATIONS, AND INFORMATION

- **Release of Funds** - This contract is contingent upon approval of funding by the City Council.
- **No Gratuities** - Firm shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City for the purpose of influencing this selection. Any attempt by Firm to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.
- **Confidential Material** - Any material that is to be considered as confidential in nature must be clearly marked as such and will be treated as confidential by the City to the extent allowed by law. Submission of information relative to this RFQ shall not be released by the City during qualification evaluation process or prior to contract award. Firms are advised that the confidentiality of their qualifications will be protected to the extent permitted by law.

Firms are advised to consider the implications of the Texas Open Records Act, particularly after the qualification process has ceased and the contract has been awarded. Trade secrets and any material that is considered as confidential in nature must be clearly marked and identified as such at the time of proposal submittal and will be treated as confidential by the City to the extent allowed by the Texas Local Government Code Chapter 252.049 and the Texas Public Information Act. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary/confidential information will result in all unmarked sections being deemed non-proprietary upon public request.

- **Qualifications Opening** - So as to avoid disclosure of the contents to competing offerors, qualifications shall be kept secret during negotiations. All qualifications shall be open for public inspection after the selection process is completed, except for trade secrets and confidential information contained in the qualification and identified by the proposer as such to the extent allowed by law.
- **Late Qualifications** - Qualifications received after the submission deadline shall be returned unopened and will be considered void and unacceptable. The City is not responsible for lateness of the mail, postal carrier, courier, etc.
- **Addenda** - Any interpretations, corrections, or changes to this RFQ will be made by addenda. Sole issuing authority shall be vested in the City. Addenda may be obtained from Periscope at Periscopeholdings.com. It is the Firms' responsibility to check the City's website for addenda.
- **Inquiries** - Do not contact the City of McLendon-Chisholm or elected officials during the selection process to make inquiries about the progress of this selection process. Firms will be contacted when it is appropriate to do so. Failure to comply with this requirement could result in disqualification for consideration.
- **Cost of Responses** - The City of McLendon-Chisholm will not be responsible for the costs incurred by anyone in the submittal of responses and interviews.
- RFQ's are issued in accordance with Section 2254 of the Texas Government Code (Professional Services Act).
- **Contract Negotiations** - This RFQ is not to be construed as a contract or as a commitment of any kind. If this RFQ results in a contract offer by the City, the specific scope of work, associated fees, and other contractual matters will be determined during contract negotiations. To ensure that the appropriate staff is assigned to the Project, the City intends to make the inclusion of a "key persons" clause a part of the contract negotiations.
- **No Obligation** - The City reserves the sole right to (1) evaluate the responses submitted; (2) waive any irregularities therein; (3) select candidates for the submittal of more detailed or alternate qualifications; (4) accept any submittal or portion of submittal; (5) reject any or all Firms submitting responses, should it be deemed in the City's best interest; or (6) cancel the entire process.
- **Equal Opportunity Employer** - The City of is an affirmative action/equal opportunity

employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap or national origin. Small, minority, and women- owned business enterprises are encouraged to submit proposals.

- **Professional Liability Insurance** - Firm shall confirm that it has the appropriate liability insurance coverage for any project for which it may be retained. Specific insurance requirements can be found in Appendix C Sample City of McLendon-Chisholm Professional Services Agreement.
- **Contract Terms and Negotiation Schedule** - The consultant for Bond Counsel, Financial Advisor, Engineering and Rate Consultant services is expected to negotiate an agreement for services that is acceptable to the City. If an acceptable contract cannot be negotiated, the City may formally end negotiations and begin negotiating with the next highest qualified person or firm.

The City reserves the right to negotiate with any and all engineers or firms that submit proposals, as per the Texas Professional Services Procurement Act. Qualified SBE, MBE and WBE firms are encouraged to submit proposals in response to this invitation. The City affords Affirmative Action to qualified small, minority and women-owned businesses. Please note that the successful respondent is required to make a "good faith effort" toward affording opportunity for qualified SBE, MBE, and WBE participation and submit, if required, supporting documentation to the TWDB.

VI. Submittal Instructions

A single response is required for consideration in this RFQ. Sealed qualification packages shall be received by the City Manager located in the City Hall Building at 1371 West FM 550, McLendon-Chisholm, Texas 75032, prior to 4:00 p.m. on November 13, 2025. All submittals must be labeled on the cover sheet with Firm's name and *Request for Qualifications for Civil Engineering, Surveying and Related Services for Streets and Roads Assessment for Preparation of Capital Improvement Plan, RFQ No. 2025-13-10*. Late submittals will not be considered.

VII. Content of Submittal

Each response shall be submitted as outlined in this section. Please include an outside cover and/or first page, containing the name of the Project, The RFQ designation (RFQ No2025-13-10), the name of the Firm, and the submittal date.

A table of contents should be next, followed by tabbed dividers separating each of the following 3 sections for general firm information; **Firm should include tabs 1, 2 and 3 and 4 only once in its RFQ submittal:**

- **Tab #1: Cover Letter & Project Name "Civil Engineering Services for Road Assessment Project"**

The first single-sided page following the divider shall be a letter transmitting the response to the City and stating that the qualifications set forth in it remains effective for a period of 90 calendar days. If Firm intends to joint venture or

subcontract for any of the services, the transmittal letter shall contain the names of all such proposed subcontractors. At least one copy of the transmittal letter shall contain the original signature of a partner, principal, or officer of the Firm

- **Tab #2: Firm Qualifications and Project References**

- a. Legal entity name for the State of Texas, addresses, and telephone numbers of all Firm offices. Specify from which office proposed services will be provided.
- b. Structure of Firm, i.e., sole proprietorship, partnership, corporation, and size of firm.
- c. Years Firm has been in business.
- d. Names of principals in Firm.
- e. Primary contact with phone number and e-mail address.
- f. Organizational description.
- g. Total number of professional and technical personnel by discipline and training.
- h. Number of Administrative staff.
- i. Describe Firm's current workload, projected workload for the next year and ability to allocate sufficient resources to projects
- j. The resumes of all persons to be assigned to the project of service with their prospective roles identified. Please indicate the intended Project Manager for City and that person's current project workload.
- k. A brief history of Firm and the services routinely provided in-house for the project.
- l. An organization chart that explains team member responsibilities. List the locations of team members if not located in the same office of the submitting firm.
- m. List of all related design awards and recognition that Firm or any of its key team members have received.
- n. Documentation that Firm and its professionals are duly registered/licensed in the State of Texas.

- **Tab #3: Quality Control/ Quality Assurance Process**

- a. Describe Quality Control/Quality Assurance Process used by Firm
- b. Describe how Firm will solicit input from interested stakeholders. This includes community residents, city council, staff, and users.
- c. Provide procedures for assisting in the development of project scheduling, coordination of consultants, quality and cost control.
- d. Describe Firm's approach to communication with the City and Construction Manager, if appropriate.
- e. Description of Firm's approach to code analysis and jurisdictional approvals.
- f. Methods used to minimize unforeseen conflicts during the construction process, if applicable.
- g. Describe the Firm's approach to providing customer service to the contractors, residents, business owners, and to the City.

- **Tab #4: Sample of Work**

- a. Provide a representative sample of the work related to the project. Samples shall illustrate work related to the project. Each sample will be weighted on its organization, clarity and ease of use.

APPENDIX "A"

SCOPE OF WORK

The engineering contract will encompass all project-related engineering services for the City, including but not limited to the following:

1. Project Initiation and Coordination

- Conduct a project kickoff meeting with City staff to review objectives, data needs, and timelines.
- Develop a detailed project schedule, communication plan, and deliverables timeline.
- Coordinate regularly with City staff to review progress and preliminary findings.

2. Data Collection and Field Assessment

- Obtain mapping from various sources, which shall include but not be limited to: Streets, City limits, ETJ Limits, Parcels, Zoning, Existing and Proposed Subdivisions, Creeks/Streams, Thoroughfare Plan, Public Water Utilities, etc.
- Proposed Developments (Location, timeline to build, number of lots/density)
- Obtain existing City standards (Subdivision Ordinance, Engineering/Construction, Thoroughfare Plan, etc.)
- Identify and categorize attributes of the City's Roadways
 - Identify (Public or Private, City, TxDOT, County, or joint maintenance responsibility)
 - Identify the ultimate classification type of roadway per Thoroughfare plan (Highway, Arterial, Collector, or Local)
 - Identify existing material type (Asphalt w/ ditches, concrete w/ ditches, concrete curb and gutter, or other)
 - Other key metrics as determined by the City and Engineer that may affect cost or schedule of projects.
- Roadway pavement assessment
 - 2023 Nexco Pavement Condition Assessment (Provided by City)
 - Engineer to perform additional site visits in various locations of the original Nexco Pavement Assessment to see if conditions remain the same or have changed.
 - Identify additional streets not included in the 2023 Nexco Pavement Assessment and evaluate pavement condition and degree of pavement failure.
 - Conduct Average Daily Traffic (Bi-directional Counts) to determine the level of traffic.
 - Conduct Preliminary Meeting with City staff to determine staff priorities for the CIP, what metrics have a higher weight, and what roads on the City system have a current higher priority.

3. Roadway CIP Development

- Conduct meeting with the City to go over the City's Thoroughfare Plan and see what future proposed roadways shall be on the cities CIP list.
- Develop matrix of existing City Roadway attributes and other metrics that will be used for ranking the streets. Meet with the City to determine what metrics that are to be included in this matrix.
- Develop a List of Roadways to include in CIP. For each project, the following is anticipated to be prepared:
 - Purpose and need of each roadway project. This will be the justification why certain Roadways need to be included in the future bond.
 - Project limits.

- Roadway classifications and typical cross sections.
 - Project constraints (i.e. major drainage items, ROW/easement acquisition, known utility relocations, permitting and other key items)
 - Project Type (New Build, Reconstruction, Large Scale Maintenance (Spot repairs, chip seal, etc.), small scale maintenance (crack sealing, etc.)
- Prepare a map of the streets to be included in the CIP.
- Develop schedule of the streets to be included in the CIP.
- Develop preliminary cost estimates for recommended road improvements for the CIP – costs shall include the following, if applicable:
 - Topo survey and ROW/easement survey
 - Geotechnical investigation and report
 - Schematic development
 - Environmental
 - ROW and easement acquisition services
 - Engineering plans and specifications
 - Construction
 - Construction administration and inspection
 - Other items that may affect cost.
- City roadway and drainage standards review
 - Review existing City standards and ordinances as it relate to roadways and determine if updates and revisions are required for implementation of Roadway CIP. Ultimately, this document will provide the City with an up-to-date Roadway system design standard for guidance with repairs/rebuilds of existing roadways and will provide proper guidance on new Roadways to ensure longevity of the new Roadway systems. Design standards, including but not limited to cross-sections, design standards based on speed limit & type of Roadway, and construction material standards, shall be reviewed as part of this task.
 - Review existing City standards and ordinances as it relate to drainage design and determine if updates and revisions are required for implementation of Roadway CIP. Compare the existing drainage design manual to current acceptable practices in the DFW area. Provide the City an up-to-date drainage design standards that will not have adverse effects on existing and future developments/private properties. Design standards, including but not limited to floodplain design, floodplain management (FEMA standards), detention requirements, closed storm sewer system design, open channel design, frequency of storms required for design, fully developed design standards, and acceptable modeling approaches, shall be reviewed as part of this task.
 - Conduct one (1) meeting with City staff, going over recommendations of Roadway CIP.
 - Make updates to Roadway CIP based on City staff meeting in preparation for P&Z and City Council meetings.
 - Planning and Zoning (P&Z) meetings:
 - Attend one (1) P&Z meeting to present results of roadway CIP.
 - Update roadway CIP as a result of input from P&Z in preparation for City Council meeting.
 - City Council meetings
 - Attend one (1) City Council Meeting to present Results of Roadway CIP.
 - Update roadway CIP as a result of input from the City Council.
 - Attend one (1) follow up City Council meeting to present changes to CIP based on City Council input.
 - Other efforts as requested by the City for Roadway CIP development.
- Schedule
 - Engineer can begin this work within ten (10) business days following a Notice to Proceed (NTP) from the City. Engineer can produce and deliver the Roadway CIP and Standards within four (4) months in preparation for City Council and P&Z approval.

4. Capital Improvement Plan Integration

- Develop recommendations for inclusion in the City's Capital Improvement Plan (CIP).
- Provide documentation and summary tables suitable for inclusion in City Council presentations or public reports.
- Assist City staff in identifying potential funding sources (TxDOT programs, grants, etc.).

5. Deliverables

- Street condition assessment report summarizing findings, methodology, and results.
- GIS-based maps illustrating pavement condition and recommended improvements.
- Prioritized project list with estimated costs and phasing recommendations.
- Presentation of findings to City Council and P&Z.

APPENDIX "B"
SCHEDULE

**REQUEST FOR QUALIFICATIONS FOR CIVIL ENGINEERING, SURVEYING AND
RELATED SERVICES FOR STREETS AND ROADS ASSESSMENT PROJECT**

RFQ 2025-13-10

Event Description	Time/Duration	Date
First Public Advertisement	One (1) Week	October 16, 2025
Second Public Advertisement	One (1) Week	October 23, 2025
Deadline to Submit Questions	5:00 p.m.	November 11, 2025
Qualifications Due	4:00 p.m.	November 13, 2025

APPENDIX "C"
AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS	§	
	§	AGREEMENT FOR PROFESSIONAL SERVICES
COUNTY OF DALLAS	§	

This Agreement for Professional Services ("Agreement") is made by and between the City of McLendon-Chisholm, Texas ("City") and _____, a _____ company, ("Professional") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide services described in Exhibit "A" (the "Scope of Services") to assist the City in the design and construction of the _____project, (the "Project") on the terms and conditions set forth in this Agreement; and

WHEREAS, the Professional desires to render services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.1 This Agreement shall commence on the last date of execution hereof ("Effective Date") and continue for one-year automatically renewable terms unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article II
Scope of Service

City of McLendon-
Chisholm RFQ 2025-13-10
Engineering Services

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services. The Professional shall perform the services with: (i) the professional skill and care ordinarily provided by competent architects or engineers, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect or engineer, as the case may be. If the Professional is not a licensed engineer or registered architect, the Professional shall perform the services: (i) with the skill and care ordinarily provided by similar professionals practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent professionals.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in the Scope of Services, if any.

2.3 Licenses. Professional represents to City that Professional possesses any and all licenses which may be required by the State of Texas or any other governmental entity having jurisdiction as may be necessary for the performance of Professional's services pursuant to this Agreement.

2.4 Information/Confidentiality. City will furnish to Professional such information with respect to the Project as Professional may reasonably request in order to render Professional's services effectively. Professional will hold in strict confidence all information with respect to the Project which is furnished to Professional by City in confidence, and which is not otherwise publicly available and/or not required, as a matter of law or proper business practice, to be disclosed to a third party in connection with the services for the Project.

2.5 Deliverables. Upon execution of this Agreement the City has the right to use the Professional's instruments of service, including but not limited to, reports, maps, cost estimates, recommendations, or other deliverables for the Project, provided that the City substantially performs its obligations, including prompt payment of all sums when due under this Agreement. City's employees, agents, contractors, and subcontractors may reproduce applicable portions of the instruments of service for use in performing services or construction related to the Project. Upon payment of all amounts due Professional hereunder, all deliverables, materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute, and otherwise use such deliverables, materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall, upon completion of the services, or earlier termination, provide the City with the deliverables, drawings, reports, maps, and materials prepared by Professional as set forth in the Scope of Services.

2.6 Conflict of Interest. Professional agrees to notify City and seek City's approval prior to Professional's retention by any other individuals or entities, which either directly or indirectly may create a conflict of interest in Professional's services under this Agreement. City may deny any such approval for Professional's retention set forth above, in the event City, in

City's sole and absolute discretion, should conclude that such retention would have an adverse effect on Professional's services under this Agreement.

2.7 Opinion of Probable Costs. Professional will, if required by the Scope of Services, furnish an opinion of probable Project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by Professional hereunder will be made on the basis of Professional's cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining their prices.

Article III Schedule of Work

3.1 The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services. Time is of the essence in the performance of services under this Agreement.

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, the total amount of fee earned to date, and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

4.2 Unless otherwise provided in the Scope of Services the Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet, and email charges.

4.3 The hourly rates set forth in the Scope of Services, if any, shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of the City.

Article V Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional

services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and obtain written approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder and shall not otherwise be reimbursed by the City unless otherwise provided herein.

5.3 The Professional shall furnish the facilities, equipment, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI

Insurance, Indemnification and Liability

6.1 Insurance.

(a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a commercial liability policy of insurance for bodily injury, death and property damage including the property of the City, its officers, contractors, agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to the work and services provided by the Professional pursuant to this Agreement with a minimum combined single limit of not less than \$2,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations coverage of \$1,000,000.00. This policy shall be primary to any policy or policies carried by or available to the City; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and (iv) Professional Liability with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate,

covering negligent acts, errors and omissions by Professional, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement.

(b) All insurance shall be endorsed to provide the following provisions: (1) name the City, its council, officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Professional shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.

(d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Professional shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Professional shall, within ten (10) business days after written request, provide the City with certificates of insurance and policy endorsements for the insurance required herein.

6.2 Indemnification. PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, TO THE EXTENT CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS AGENT, ITS CONSULTANTS AND CONTRACTORS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL. INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE PROFESSIONAL'S LIABILITY. THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.3 Liability Limitation Prohibition. THERE IS NO LIMITATION OF PROFESSIONAL'S LIABILITY AND NONE WILL BE ACKNOWLEDGED, AGREED TO OR OTHERWISE RECOGNIZED IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES PROVIDED BY PROFESSIONAL, REGARDLESS OF ANY TERM OR PROVISION CONTAINED WITHIN ANY OTHER DOCUMENT THAT MAY FORM A PART OF THE AGREEMENT BETWEEN THE CITY AND PROFESSIONAL. NO RESPONSE TO CITY'S REQUEST FOR QUALIFICATIONS, ANY INVOICE, STATEMENT OR OTHER DOCUMENT MAY VARY THIS REQUIREMENT.

Article VII Miscellaneous

7.1 Ownership of Instruments of Service. All documents including but not limited to reports, drawings and specifications, provided or furnished by Professional pursuant to this Agreement are instruments of service in respect to the Project, whether or not the Project is completed, and shall be the property of the City. The City shall have, keep and retain all rights, title and interest in and to all Instruments of Service, including all ownership, common law, statutory, and other reserved rights, including copyrights, in and to all Instruments of Service, whether in draft form or final form, which are produced at its request and in furtherance of this Agreement. The Professional shall endeavor to omit any information in the Instruments of Service which may constitute trade secrets. If any portion of the documents comprising the Instruments of Service have been previously copyrighted or otherwise protected from disclosure or unauthorized use by the Professional which have previously been prepared by the Professional and which are not created for the sole and specific purpose of this Project, such copyright protections or reservations of rights shall be expressly stated thereon. When such documents are in electronic form, the City shall own copies of data files, text, specifications or drawings for the City's information in its use of the Services. However, due to the potential that electronic information can be modified by the City or other persons, unintentionally or otherwise, Professional reserves the right to remove all indicia of its ownership and/or involvement from each electronic display or file. For documentation purposes, the original computer files will be retained by Professional for a period not to exceed five (5) years after completion of the Services. Thereafter, all such files shall be remitted to the City. In addition, electronic information created and produced by Professional is considered a part of Professional's instrument of service and will not be used by the City on other Services, for additions to this Service, or for completion of this Service by another design professional except by agreement or Professional's default. Any such use or reuse of any instrument of service by the City or others without written verification or data adaptation by Professional for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to Professional.

7.2 Viruses and Malware. Professional's indemnity obligations under this Agreement extend to its failure to implement and maintain reasonable measures and precautions to protect the City and the City's facilities from data breaches and the introduction into the City's computer network of any programs, mechanisms, programming devices, malware or other computer code
(i) designed to disrupt, disable, harm, or otherwise impede in any manner the operation of any software program or code, or any computer system or network (commonly referred to as

"malware", "spyware", "viruses" or "worms"); (ii) that would disable or impair the operation thereof or of any software, computer system or network in any way based on the elapsing of a period of time or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); (iii) is designed to or could reasonably be used to permit a party or any third party to access any computer system or network (referred to as "trojans", "traps", "access codes" or "trap door" devices); or (iv) is designed to or could reasonably be used to permit a party or any third party to track, monitor or otherwise report the operation and use of any software program or any computer system or network by the other party or any of its customers. The Professional will hold harmless, indemnify and defend the City from and against data breaches and malware, ransomware, viruses or other electronic software, routines, programs, codes or devices that may damage or impair the City's computer facilities arising from the Professional's performance under this Agreement.

7.3 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

7.4 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

7.5 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

7.6 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.7 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

7.8 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

7.9 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional

shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

7.10 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

7.11 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: City Manager
City of McLendon-Chisholm,
Texas
1371 West FM 550
McLendon-Chisholm,
Texas 75032

If intended for Professional:

7.12 Debarment and Suspension.

- (a) In accordance with 2 CFR section 180.300, Professional verifies that Professional and its principals under this Agreement as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, that neither Professional nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas, or any of its departments or agencies.
- (b) If, during the term of this Agreement, Professional becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, Professional shall immediately inform the City.

- (c) For agreements that are financed by Federal or State grants, Professional agrees that this section will be enforced on each of its subcontractors and will inform the City of any violations of this section by subcontractors to the Agreement.
- (d) The certification in this section is a material representation of fact relied upon by the City in entering into this Agreement.

7.13 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

7.14 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

7.15 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

- (a) Professional verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
- (b) Professional verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.
- (c) Professional verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and
 - (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- (d) This section does not apply if Professional is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional has ten (10) or more full-time employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

(Signature Page to Follow)

EXECUTED this _____ day of _____-' 2025.

CITY OF MCLENDON-CHISHOLM, TEXAS

By: _____
City Manager

EXECUTED this _____ day of _____, 2025.

Professional

By: _____
Name: _____
Title _____



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider a resolution awarding a contract for the SH 205 and FM 550 Sanitary Sewer Improvements project to JWC Excavation, LLC.

Background:

The City of McLendon-Chisholm continues to expand and improve its sanitary sewer system to support current and future development. As part of these efforts, the City is implementing a utility relocation project at the SH 205 and FM 550 intersection to address existing utility conflicts and accommodate infrastructure improvements. This project will relocate and extend sanitary sewer utilities to provide service to all quadrants of the intersection and improve overall system connectivity within this key corridor.

The SH 205 & FM 550 Sanitary Sewer Improvements Project includes the following scope of work:

- Connection to an existing sanitary sewer manhole stub located at the southeast corner of SH 205 and FM 550 within a sanitary sewer easement;
- Construction of 4-foot diameter sanitary sewer manholes;
- Installation of approximately 637 linear feet of 12-inch PVC sanitary sewer line by open cut and by bore with steel encasement pipe;
- Lowering approximately 57 linear feet of an existing 8-inch sanitary sewer force main to allow for the sanitary sewer crossing at FM 550.

The project was advertised in the local newspapers in accordance with local and state procurement statutes. A total of nine (9) bids were received, with bid amounts ranging from \$400,585.00 to \$618,482.00. City staff in partnership with TNP Engineering reviewed all submissions for responsiveness and responsibility and determined that JWC Excavation, LLC submitted the lowest responsive and responsible bid.

Fiscal Impact:

Funding for this project will be provided through the City's American Rescue Plan Act (ARPA) funds, which has sufficient available balance to fully cover the project costs.

Options/Alternatives:

1. City Council may approve the Resolution, as presented.
2. City Council may deny the Resolution.

Recommendation:

Staff recommend approval of the Resolution, as presented.

Attachments:

- Resolution
- Contract
- Award recommendation letter from Engineer
- Project location

Presenter: Fabrice Kabona, City Manager

January 6, 2026

City of McLendon-Chisholm
Mr. Fabrice Kabona
City Administrator
1371 W. FM 550
McLendon-Chisholm, TX 75032

RE: SH 205 & FM 550 Sanitary Sewer Improvements

Mr. Kabona,

Bids were received on December 5, 2025, for the above-referenced project. We have reviewed the bids for conformity with the bidding documents and checked them for anomalies. We recommend the following contractors be awarded this work and proceed with the preparation of contract documents for the following:

- SH 205 & FM 550 Sanitary Sewer Improvements: JWC Excavation, LLC. in the amount of \$400,585.00 and 60 Calendar Days.

Sincerely,
tnp



Cameron Slown, PE
Senior Project Manager

PROJECT MANUAL

FOR THE

**SH 205 & FM 550 SANITARY SEWER
IMPROVEMENTS**

FOR THE

CITY OF McLENDON-CHISHOLM, TEXAS



November 2025

Prepared By:



TBPELS Engineering No. F-230

CITY OF MCLENDON-CHISHOLM, TEXAS
SH 205 & FM 550 SANITARY SEWER IMPROVEMENTS

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INVITATION TO BID

SH 205 AND FM 550 SANITARY SEWER IMPROVEMENTS

SEALED BIDS for the purpose of furnishing all labor, materials and equipment and performance of all work required in the construction of **SH 205 AND FM 550 SANITARY SEWER IMPROVEMENTS** and other improvements incidental thereto, in the City of McLendon-Chisholm ("City"), Texas will be received until **3:00 P.M. on Friday, December 5, 2025**, by the City of McLendon-Chisholm, 1371 West FM 550, McLendon-Chisholm, TX 75032, at which time in the Council Chambers the proposals will be publicly opened and read aloud and retained by the City for tabulation, checking and evaluation.

The project involves the connection to an existing sanitary sewer manhole stub at the Southeast corner of SH 205 and FM 550 within a sanitary sewer easement and the construction of 4' diameter manholes and 637 linear feet of 12" PVC sanitary sewer line in McLendon-Chisholm, Texas by open cut and by bore with steel encasement pipe. Approximately 57 linear feet of existing 8" sanitary sewer force main will need to be lowered as part of this project to allow for the sanitary sewer crossing at FM 550.

Bids shall be submitted in sealed envelopes upon the blank form of proposal furnished. Sealed envelopes shall be clearly marked **"SH 205 and FM 550 Sanitary Sewer Improvements- DO NOT OPEN UNTIL 3:00 P.M. on Friday, December 5, 2025"** and shall be addressed as follows:

Bid for SH 205 Sanitary Sewer Improvements
Attn: Fabrice Kabona, City Manager
City of McLendon-Chisholm
1371 West FM 550
McLendon-Chisholm, TX 75032

PLANS AND SPECIFICATIONS and contract documents may be obtained via [www.civcast.com] beginning **November 14, 2025**. The documents may also be examined without charge at McLendon-Chisholm City Hall, 1371 West FM 550, McLendon-Chisholm, TX 75032. Copies of such instruments may be obtained from the office of Teague, Nall and Perkins, Inc., 825 Watters Creek Boulevard, Suite M300, Allen, Texas 75013 upon a non-refundable deposit of \$50 per set. (TNP office hours: Monday - Friday - 8:00 A.M. to 5:00 P.M.).

A pre-bid conference will be held at **2:00 P.M. on Monday November 24, 2025** in the McLendon-Chisholm Council Chambers located at 1371 West FM 550, McLendon-Chisholm, TX 75032. Representatives of the Owner and Engineer will be present to discuss the project. Engineer will provide to prospective Bidders of Record such Addenda as Engineer considers necessary in response to discussions or inquiries arising at the conference.

The City reserves the right to waive any minor informalities or irregularities in any proposal. The City also reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interest of the City. No bid may be withdrawn within sixty (60) days after the date on which bids are opened.

The contractor is required to fill out and notarize the Certificate of Interested Parties Form 1295 and the form must be submitted to the City before the contract will be presented to the City Council. The form can be obtained at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>

ADVERTISEMENT DATES:

Royse City

Thursday, November 13, 2025

Thursday, November 20, 2025

Rockwall

Friday, November 14, 2025

Friday, November 21, 2025

INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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Endorsed by



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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 - B. *Agreement* – The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 - C. *Bid* – The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 - D. *Bidder* – The individual or entity who submits a Bid directly to Owner.
 - E. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 - F. *Bidding Requirements* – The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.
 - G. *Engineer* – The individual or entity named as such in the Agreement.
 - H. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
 - I. *Notice of Award* – The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
 - J. *Notice to Proceed* – A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
 - K. *Owner* – The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
 - L. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
 - M. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

- N. *Successful Bidder* – The Bidder submitting a responsive Bid to whom Owner makes an award.
- O. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
- P. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
- Q. *Underground Facilities* – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- R. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents in the number and for the non-refundable deposit sum stated in the advertisement or invitation to bid may be obtained from the Issuing Office.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within 7 days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.
 - A. Evidence of Bidder's authority to do business in the state where the Project is located.
 - B. Bidder's state contractor license number, if applicable.

- 3.02 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

A. The Supplementary Conditions identify:

1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site.
2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

- B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.02 *Underground Facilities*

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

4.03 *Hazardous Environmental Condition*

- A. The Supplementary Conditions identify any reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site.
- B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.
- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 4.06 A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.
- B. Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data";
- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;

- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
 - G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – PRE-BID CONFERENCE

- 5.01 A pre-bid conference will be held at 2:00 p.m. local time on Monday, November 24, 2025 at the McLendon-Chisholm Council Chambers located at 1371 West FM 550, McLendon-Chisholm, TX 75032. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 – SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price and in the form of a certified check, bank money order, or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

- 12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.
- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from Engineer.
- 13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item listed therein. In the case of optional alternatives, the words "No Bid," "No Change," or "Not Applicable" may be entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.

- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 *Unit Price*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 The Bid Form and Bid Bond Form are included in each copy of the Bidding Documents. The bound copy of the Bid Form is to be completed and submitted with the Bid security and the following documents:
- A. Conflict of Interest Questionnaire
- B. Vendor Compliance with Reciprocity on Non-Resident Bidders Form
- C. Exhibit A – Work History
- D. Exhibit B – Supplemental Information
- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation **“BID ENCLOSED – SH 205 and FM 550 SANITARY SEWER LINE IMPROVEMENTS– DO NOT OPEN UNTIL 3:00 P.M. on Thursday, December 4, 2025.”** A mailed Bid shall be addressed to Mr. Fabrice Kabona, City Manager, McLendon-Chisholm City Hall, 1371 West FM 550, McLendon-Chisholm, TX 75032.

- 15.03 The contractor is required to fill out and notarize the Certificate of Interested Parties Form 1295 and the form must be submitted to the City before the contract will be presented to the City Council. The form can be obtained at:

<https://www.ethics.state.tx.us/tec/1295-Info.htm>.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. As allowed by law, Owner further shall have the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner may in its sole discretion reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for

those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions. Furthermore, in accordance with Government Code Section 2269, Owner may consider:

- a. the price;
- b. the offeror's experience and reputation;
- c. the quality of the offeror's goods or services;
- d. the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- e. the offeror's safety record;
- f. the offeror's proposed personnel;
- g. whether the offeror's financial capability is appropriate to the size and scope of the project; and
- h. any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, Owner will award the Contract to the lowest responsible bidder after evaluation of the criteria established in these instructions.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 22 – SALES AND USE TAXES

22.01 Owner is exempt from federal excise taxes and Texas state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Bid. Refer to Paragraph 6.10 of the Supplementary Conditions for additional information.

"General Decision Number: TX20250018 01/03/2025

Superseded General Decision Number: TX20240018

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall
Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling
Where the Tunnel is 48"" or Less in Diameter)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025

PLUM0100-002 11/01/2024

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 39.76	14.04

SUTX1991-004 09/23/1991		

	Rates	Fringes
Laborers:		
Common.....	\$ 7.25 **	
Utility.....	\$ 7.467 **	
Pipelayer.....	\$ 7.828 **	
Power equipment operators:		
Backhoe.....	\$ 10.804 **	
Crane.....	\$ 10.942 **	
Front End Loader.....	\$ 9.163 **	
Tunneling Machine (48" or less).....	\$ 9.163 **	
TRUCK DRIVER.....	\$ 8.528 **	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage

determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers.

0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The "SA" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the "SA" identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

BID FORM FOR CONSTRUCTION CONTRACTS

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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BID FORM

SH 205 & FM 550 Sanitary Sewer Improvements
McLendon-Chisholm, Texas

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

The City of McLendon-Chisholm
1371 West FM 550
McLendon-Chisholm, TX 75032

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."
- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and

documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- 1. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

BASE BID

Item No.	Est. Quantity	Unit	Description of Item and Unit Bid Price in Words	Unit Price Bid	Amount Bid
1	1	LS	Mobilization Complete in place of the sum of: _____ dollars and _____ cents per the lump sum.		
2	637	LF	12" SDR 26 Sewer Pipe Complete in place of the sum of: _____ dollars and _____ cents per linear foot.		
3	219	LF	12" Bore and Casing Pipe at Hwy 205 Complete in place of the sum of: _____ dollars and _____ cents per linear foot.		
4	253	LF	12" Bore and Casing Pipe at FM 550 Complete in place of the sum of: _____ dollars and _____ cents per linear foot.		
5	2	EA	4' Diameter Manhole Complete in place of the sum of: _____ dollars and _____ cents per each.		
6	3	EA	12" Stub and plug _____ dollars and _____ cents per each.		

Item No.	Est. Quantity	Unit	Description of Item and Unit Bid Price in Words	Unit Price Bid	Amount Bid
7	20	LF	12" Sewer Line Concrete Encasement Complete in place of the sum of: _____ dollars and _____ cents		
8	57	LF	8" Sanitary Sewer Force Main Lowering Complete in place of the sum of: _____ dollars and _____ cents per linear foot.		
9	2	EA	Connect to existing 12" manhole stub _____ dollars and _____ cents per each.		
10	1	EA	Existing telephone line lowering _____ dollars and _____ cents per each.		
11	627	LF	TV/Testing (per City Specs.) _____ dollars and _____ cents per linear foot.		
12	627	LF	Trench Safety _____ dollars and _____ cents per linear foot.		
13	25000	SF	Revegetation _____ dollars and _____ cents per linear foot.		

TOTAL BID (BID ITEMS 1 THROUGH 13) (words and figures)

dollars

cents

\$

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 - TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security in the form of a certified or cashier's check or Bid Bond in the amount of 5% of the Bidder's maximum bid price, made payable to the Owner, in accordance with Article 8 of the Instructions to Bidders;
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;
- D. List of Project References;
- E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
- F. Contractor's License No.: _____;
- G. Required Conflict of Interest Questionnaire;
- H. Required Vendor Compliance Statement;
- I. Required Supplemental Information Form;
- J. Exhibit A – Work History; and
- K. Exhibit B – Supplemental Information

ARTICLE 8 – BID SUBMITTAL

8.01 This Bid is submitted by:

If Bidder is:
An Individual

Name (typed or printed): _____

By: _____
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____
Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____
(CORPORATE SEAL)

Attest _____

Date of Qualification to do business in Texas is ____/____/____.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address _____

Phone No. _____ Fax No. _____

E-mail _____

SUBMITTED on _____, 20____.

State Contractor License No. _____.

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name and Address of Principal Place of Business*):

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name and Include Location*):

BOND

Bond Number:

Date (*Not earlier than Bid due date*):

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER**SURETY**

Bidder's Name and Corporate Seal (Seal) Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

CIQ CONFLICT OF INTEREST QUESTIONNAIRE COVERSHEET

Any bidder who completes this questionnaire must separately file the form with the City Administrator's Office at:

**City Administrator
City of McLendon-Chisholm
1371 West FM 550
McLendon-Chisholm, Texas 75032**

BIDDER:

Name: _____

Address: _____

Local Government Officers City of McLendon-Chisholm, Texas

For purposes of completion of the required Conflict of Interest Questionnaire for the City of McLendon-Chisholm, Texas, (required by all Vendors who submit bids/proposals), Local Government Officers are:

Mayor: Bryan McNeal

Council

Members: Donald Goodwin, Council Place 1
Dennis London, Council Place 2
Arik Towry, Council Place 3
Jerry Brewer, Council Place 4/Mayor Pro Tem
John Powers, Council Place 5
Rich Dean, Council Place 6

City Administrator: Fabrice Kabona

City Attorney: Michael Halla

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

VENDOR COMPLIANCE WITH RECIPROCITY ON NON-RESIDENT BIDDERS

Texas Government Code §2252.002 provides:

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident bidder underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in:

- (1) the state in which the nonresident's principal place of business is located; or
- (2) a state in which the nonresident is a resident manufacturer.

A nonresident bidder is a bidder whose corporate offices or principal place of business is outside the state to Texas.

This requirement does not apply to a contract involving federal funds.

The failure of a nonresident bidder to complete this form will automatically disqualify the bidder.

Resident bidders must check the box in section B.

- A. ☐ Nonresident bidders in _____ state, our principal place of business, are required to be _____ percent lower than resident bidders by state law. A copy of the _____ state statute is attached hereto.

OR

- ☐ Nonresident bidders in _____ state, our principal place of business, are not required to underbid resident bidders.

- B. ☐ Our principal place of business or corporate offices are located in the State of Texas.

BIDDER:

Name: _____

By: _____

Printed Name: _____

Title: _____

Address: _____

EXHIBIT A
WORK HISTORY

List all references for contracts similar in scope.

Client Name:
Contact Name:
Phone Number:
Dates of Service:
Brief description of service provided:

Client Name:
Contact Name:
Phone Number:
Dates of Service:
Brief description of service provided:

Client Name:
Contact Name:
Phone Number:
Dates of Service:
Brief description of service provided:

Client Name:
Contact Name:
Phone Number:
Dates of Service:
Brief description of service provided:

In the last three years, have you been released or removed from a job prior to the job being completed?

Circle one:

Yes No

If yes, explain: _____

EXHIBIT B
SUPPLEMENTAL INFORMATION

The following information is required to be included with the bid packet.

Select the type of entity (*check the box, and provide requested information*):

☐ **Sole Proprietorship:**

Legal name: _____

Business Address: _____

Assumed Name Certificate on file in _____ County, Texas

☐ **General Partnership:**

Legal name: _____

Business Address: _____

Assumed Name Certificate on file in _____ County, Texas

☐ **Limited Partnership:**

Legal name: _____

Business Address: _____

General Partner: _____

Assumed Name Certificate on file in _____ County, Texas

☐ **Corporation (*provide a copy of article of incorporation*):**

Legal name: _____

Business Address: _____

Name and title of officer authorized to sign on behalf of the corporation:

☐ **Limited Liability Company (*provide a copy of articles of organization*):**

Legal name: _____

Business Address: _____

Name of member authorized to sign on behalf of the LLC:

How is the LLC managed (*circle one*):

manager managed

member managed

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

This Suggested Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The language contained in the Suggested Instructions to Bidders (EJCDC C-200, 2007 Edition) is also carefully interrelated with the language of this Agreement. Their usage is discussed in the Narrative Guide to the 2007 EJCDC Construction Documents (EJCDC C-001, 2007 Edition).

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www.agc.org

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STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of McLendon-Chisholm, Texas (“Owner”) and
_____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The project involves the connection to an existing sanitary sewer manhole stub at the Southeast corner of SH 205 and FM 550 within a sanitary sewer easement and the construction of 4’ diameter manholes and 637 linear feet of 12” PVC sanitary sewer line in McLendon-Chisholm, Texas by open cut and by bore with steel encasement pipe. Approximately 57 linear feet of existing 8” sanitary sewer force main will need to be lowered as part of this project to allow for the sanitary sewer crossing at FM 550 within the City of McLendon-Chisholm, Texas.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

SH 205 & FM 550 Sanitary Sewer Improvements

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Teague, Nall and Perkins, Inc. (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Days to Achieve Substantial Completion and Final Payment*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. The Work shall be substantially completed within **60** calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **90** calendar days after the date when the Contract Times commence to run.

4.02 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined in accordance with the Contract Documents as follows:

Total of all Bid Prices (Unit Price Work) shall not exceed the sum of _____ DOLLARS (\$_____).

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A

of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest only as expressly allowed by law within the applicable jurisdiction.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work as required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Owner's Bid Documents issued for this Project.

3. Performance bond.
 4. Payment bond.
 5. Maintenance bond.
 6. General Conditions.
 7. Supplementary Conditions.
 8. Specifications as listed in the table of contents of the Project Manual.
 9. Drawings bearing the following general title: SH 205 Sanitary Sewer Improvements
 10. Addenda (numbers _____ to _____, inclusive).
 11. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - c. Conflict of Interest Questionnaire.
 - d. Vendor Compliance with Reciprocity on Non-Resident Bidders.
 - e. Exhibit A – Work History.
 - f. Exhibit B – Supplemental Information.
 12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above). The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency in any of the provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above in Article 9, subject to any express terms addressing and resolving conflicts within and between documents. There are no Contract Documents other than those listed above in this Article 9.
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Savings/Severability*

- A. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Insurance*

- A. The Contractor shall procure and keep in full force and effect prior to the commencement and throughout the term of this Agreement, all insurance policies specified in, and required by, the Contract Documents. Contractor shall provide appropriate Acord Forms and policies necessary to evidence the required coverage.

10.07 **INDEMNIFICATION**

INDEMNIFICATION. CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACT OR OMISSION OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS DIRECTORS AND REPRESENTATIVES OF CITY IN CONNECTION WITH SERVICES OR ACTS PROVIDED BY CONTRACTOR UNDER THIS CONTRACT. THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONTRACTOR SHALL PROMPTLY ADVISE THE CITY

IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR CONTRACTOR KNOWN TO CONTRACTOR RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONTRACTOR'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

10.08 *Immunity*

- A. The Parties agree that the Owner has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

10.09 *Assignment/Non-Transferable*

- A. The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the Owner.

10.10 *Successors and Assigns*

- A. The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

10.11 *Execution and Consideration*

- A. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

10.12 *Notices*

- A. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To Owner: City of McLendon-Chisholm
 1371 West FM 550 McLendon-Chisholm, Texas 75032

10.13 *Cumulative Remedies*

- A. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other

provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

10.14 *Waiver of Breach*

- A. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.

10.15 *Parties Bound*

- A. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

10.16 *No Third-Party Beneficiaries*

- A. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

10.17 *Incorporation of Recitals*

- A. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.

10.18 *Entire Agreement*

- A. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for this project only and not any other matters that may exist between the Parties past, present or future.

10.19 *Venue*

- A. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Rockwall County, Texas.

10.20 *Consideration*

- A. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

10.21 *Counterparts*

- A. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

10.22 *Authority to Execute*

- A. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

10.23 *Force Majeure*

- A. Neither _____ nor the Owner shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.

10.24 *Miscellaneous Drafting Provisions*

- A. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

10.25 *Representations*

- A. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*): SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
 - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
 - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address and Telephone)*

Surety Agency or Broker:

Owner's Representative *(Engineer or other party)*:

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*):

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – (*Name, Address, and Telephone*)

Surety Agency or Broker:

Owner's Representative (*Engineer or other*):

STATE OF TEXAS §
COUNTY OF _____ §

(AMOUNT DETERMINED BY % OF TOTAL CONTRACT PRICE STATED IN SUPPLEMENTARY CONDITIONS)

Dollars (\$ _____) for the payment of which sum well and truly to be made unto said _____

_____ and its successors, said principal and sureties

(NAME OF OWNER)

do hereby bind themselves, their assigns, and successors jointly and severally.

which contract and the plans and specifications therein mentioned and adopted by the _____
(NAME OF OWNER)
_____ are hereby expressly made a part thereof as though the same were written and embodied herein.

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MAINTENANCE BOND (Cont'd)

NOW, THEREFORE, if the said Contractor shall keep and perform its said agreement to maintain said work and keep the same in good repair for the said maintenance period as provided above, then these presents shall be null and void and have no further effect, but if default shall be made by the said Contractor in the performance of its contract to do so maintain and repair damages in the premises, as provided, and it is further understood and agreed that this obligation shall be a continuing one against the principal and sureties hereon, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any clause during said time.

IN WITNESS WHEREOF, the said _____
(NAME OF CONTRACTOR)
has caused these presents to be executed by _____
(NAME OF CONTRACTOR'S AUTHORIZED SIGNER)
and the said _____
(NAME OF SURETY)
has caused these presents to be executed by its _____
(ATTORNEY-IN-FACT OR OFFICIAL)
and the said _____
(ATTORNEY-IN-FACT OR OFFICIAL)
has hereto set his hand this the _____ day of _____, 20 ____.

SURETY

PRINCIPAL

By _____

By _____

ATTEST:

By _____
SURETY

SECRETARY

NOTE: Date of Maintenance Bond must not be prior to date of Contract. Power of Attorney must be attached.
Amount and Term of Maintenance Bond shall be as stated in the "Supplementary Conditions."

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of

the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

- 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

- 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Contract Documents; or
- 3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments*:

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to

permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
 - 1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners,

employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of

them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or

entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its

use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner

and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts

any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.

- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

- 1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
- 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

- 1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the

Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe

access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner’s duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner’s Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws

and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations

on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of,

and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of

executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
 - 1. deny the Claim in whole or in part;
 - 2. approve the Claim; or
 - 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 - 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in

the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,

architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's

review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
- 2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
- 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and

- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
3. Contractor's repeated disregard of the authority of Engineer; or
4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other

dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or

2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS

SH 205 & FM 550 SANITARY SEWER IMPROVEMENTS

CITY OF McLENDON-CHISHOLM, TEXAS

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SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the General Conditions and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1.01 DEFINITIONS:

The terms used in these Supplementary Conditions have the meanings assigned to them in the General Conditions or as amended below, which are applicable to both the singular and plural forms thereof.

SC-1.01.A.19 *Engineer*

Add the following language to the end of the definition:

“The word "Engineer" in these specifications shall be understood as referring to Teague, Nall, and Perkins, Inc., 825 Watters Creek Boulevard, Suite M300, Allen, Texas 75013, Engineer of the Owner, or such other representative as may be authorized by said Owner to act in any particular position.”

SC-1.01.A.30 *Owner*

Add the following language to the end of the definition:

“The words "Owner" or "City" in these documents shall be understood as referring to the City of McLendon-Chisholm, Texas, located at 1371 FM 550 McLendon-Chisholm, Texas 75032.

SC-1.01.A.33 *Project*

Add the following language to the end of the definition:

The base bid project involves the connection to an existing sanitary sewer manhole stub at the Southeast corner of SH 205 and FM 550 within a sanitary sewer easement and the construction of 4' diameter manholes and 637 linear feet of 12" PVC sanitary sewer line in McLendon-Chisholm, Texas by open cut and by bore with steel encasement pipe. Approximately 57 linear feet of existing 8" sanitary sewer force main will need to be lowered as part of this project to allow for the sanitary sewer crossing at FM 550 within the City of McLendon-Chisholm, Texas.

SC-1.01.A.41 *Specifications*

Add the following language to the end of the definition:

“Except as herein amended or supplemented, Division 2 through 8 of the Standard Specifications for Public Works Construction adopted by the North Texas Council of Governments Fifth Edition in November, 2017, with all amendments as well as the City of McLendon-Chisholm Design Criteria and Construction Standards shall govern and shall constitute the specifications. In addition, the Standard Specifications adopted by the Texas Department of Transportation on February 26, 2018 with all amendments thereto shall govern the traffic control portion of the project.” They are not physically bound with other contract documents but are incorporated by reference. In case of discrepancy between NCTCOG specifications and the City's standards, the City's standards shall govern.”

SC-1.01.A.44 *Supplementary Conditions*

Add the following language to the end of the definition:

"Where in the Bonds and elsewhere in the contract, the terms "Special Provisions," and "Special Conditions" appear, they shall be read to mean "Supplementary Conditions."

SC-2.01 DELIVERY OF BONDS AND EVIDENCE OF INSURANCE:

Revise paragraph B with the following language:

"Evidence of Insurance: Before any Work at the Site is started, Contractor shall deliver to the Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with Article 5."

SC-2.02 COPIES OF DOCUMENTS:

Delete the first sentence of paragraph 2.02 of the General Conditions and replace with the following sentence:

"OWNER shall furnish to CONTRACTOR up to five copies of the Contract Documents as are reasonably necessary for the execution of the Work."

SC-2.03 NOTICE TO PROCEED:

Delete paragraph 2.03 of the General Conditions in its entirety and replace with the following paragraph:

"The Contract Times will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement."

SC-2.04 STARTING THE PROJECT:

Delete paragraph 2.04 of the General Conditions in its entirety and replace with the following paragraph:

"CONTRACTOR shall start to perform the Work within ten (10) calendar days of the date when the Contract Time commences to run, but no work shall be done at the site prior to the Effective Date of the Agreement."

SC-2.05.A SCHEDULES:

Amend the first sentence of paragraph 2.05.A of the General Conditions to read as follows:

"Within five (5) days after the Effective Date of the Agreement, CONTRACTOR shall submit to ENGINEER for review:"

"...and as amended paragraph 2.05.A remains in effect."

SC-4.02 SUBSURFACE AND PHYSICAL CONDITIONS:

NOT USED

SC-4.06 HAZARDOUS ENVIRONMENTAL CONDITIONS:

Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not Used.

Delete Paragraphs 4.06.G

In paragraph 4.06.H, delete the words “arbitration or other” in the first sentence.

SC-5 MAINTENANCE BOND:

"CONTRACTOR shall furnish Performance and Payment Bonds in accordance with Article 5.01.A of the General Conditions. Contractor shall also furnish a Maintenance Bond in the amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. The Maintenance Bond shall remain in force for a period of two (2) years after the date of final acceptance of the work by the Owner."

SC-5.01 PERFORMANCE, PAYMENT AND OTHER BONDS:

Revise paragraph 5.01.B to read as follows:

“All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury and authorized to do business in the State of Texas. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.”

Revise paragraph 5.01.C to read as follows:

“If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and

5.02. Owner shall have the right to suspend work until such time as required bonding is in place on the Project.”

SC-5.02 LICENSED SURETIES AND INSURERS:

Revise paragraph 5.02.A to read as follows:

“All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Contract Documents, including without limitation the Supplementary Conditions.”

SC-5.03 CERTIFICATES OF INSURANCE:

Revise paragraph 5.03.B to read as follows:

“Upon request of Contractor, Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.”

SC-5.04 CONTRACTOR’S LIABILITY INSURANCE:

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations: 5.04.A.1 and 5.04.A.2. Workers' Compensation, etc. under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

- | | | |
|-----|---|-------------|
| (1) | State: | Statutory |
| (2) | Applicable Federal (e.g. Longshoreman's): | Statutory |
| (3) | Employer's Liability: | \$1,000,000 |

5.04.A.3, 5.04.A.4, 5.04.A.5, and 5.04.A.6. Comprehensive General Liability (under paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions):

- | | | |
|-----|--|------------------|
| (1) | Bodily Injury (including completed operations and products liability): | |
| | \$1,000,000 | Each Occurrence |
| | \$2,000,000 | Annual Aggregate |
| | Property Damage: | |
| | \$300,000 | Each Occurrence |
| | \$2,000,000 | Annual Aggregate |
| (2) | Property Damage liability insurance will provide Explosion, Collapse and Under-ground coverage where applicable. | |
| (3) | Personal Injury, with employment exclusion | |

deleted	
\$1,000,000	Annual Aggregate

5.04.B.1. Comprehensive Automobile Liability:

Bodily Injury:	
\$500,000	Each Person
\$1,000,000	Each Occurrence
Property Damage:	
\$500,000	Each Occurrence

SC-5.04.B.4 CONTRACTOR'S LIABILITY INSURANCE:

The Contractual Liability required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:

Bodily Injury:	
\$500,000	Each Person
\$1,000,000	Each Occurrence
Property Damage:	
\$300,000	Each Occurrence
\$2,000,000	Annual Aggregate

SC-5.04.B.7 WORKERS' COMPENSATION INSURANCE COVERAGE:

Add the following paragraphs to Article 5 of the General Conditions:

"5.04.B.7 Workers' Compensation Insurance Coverage.

"In addition to other insurance requirements stipulated herein, the CONTRACTOR shall comply with all requirements of 28 TAC 110.110 and other requirements outlined in this section. Definitions contained in this section are for this section only."

"5.04.B.7.1 Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or OWNER's employees providing services on a project, for the duration of the project."

Duration of the project - includes the time from the beginning of the work on the project until the CONTRACTOR's/person's work on the project has been completed and accepted by the OWNER.

"Persons providing services on the project ("subcontractor") - includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the project regardless of whether that person contracted directly with the CONTRACTOR and

regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets."

"5.04.B.7.2 The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project."

"5.04.B.7.3 The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the contract."

"5.04.B.7.4 If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER showing that coverage has been extended."

"5.04.B.7.5 The CONTRACTOR shall obtain from each person providing services on a project, and provide to the OWNER:

- (1) a certificate of coverage, prior to that person beginning work on the project, so the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- (2) no later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project."

"5.04.B.7.6 The CONTRACTOR shall retain all required certificates of coverage for the duration of the project and for one year thereafter."

"5.04.B.7.7 The CONTRACTOR shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project."

"5.04.B.7.8 The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage."

"5.04.B.7.9 The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees

providing services on the project, for the duration of the project;

- (2) provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the CONTRACTOR:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services."

"5.04.B.7.10 By signing the Contract Documents or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions."

"5.04.B.7.11 The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the contract void if the CONTRACTOR does not remedy the breach within ten days after receipt of the notice of breach from the OWNER."

"5.04.B.7.12 The text for the notice prescribed in 5.04.B.8.8 shall read as follows:

REQUIRED WORKERS' COMPENSATION COVERAGE

The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

SC-5.05 OWNER'S LIABILITY INSURANCE:

Delete Paragraph 5.05 of the General Conditions in its entirety and replace with the following:

"The Contractor shall file with Owner a Certificate of Insurance naming the Owner as an additional insured with regard to the contract project and evidencing insurance coverage of limits not less than the limits indicated in SC-5.04 and SC-5.04.B.4."

SC-5.06 PROPERTY INSURANCE:

Delete Paragraph 5.06.A of the General Conditions in its entirety and insert the following in its place:

"5.06.A. CONTRACTOR shall purchase and maintain until final payment property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and Engineer's consultants in the Work (all of whom shall be listed as insured or additional insured parties), shall insure against the perils of fire and extended coverage, shall include "all-risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in these Supplementary Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all-risk" insurance or otherwise provided in these Supplementary Conditions, CONTRACTOR shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph 5.06.A shall comply with the requirements of GC-5.06.C."

SC-5.06.B PROPERTY INSURANCE:

Delete Paragraph 5.06.B of the General Conditions in its entirety.

SC-5.07 WAIVER OF RIGHTS:

Delete Paragraphs 5.07.B and 5.07.C in their entirety.

SC-5.08 WAIVER OF RIGHTS:

Revise paragraph 5.08.B to read as follows :

“Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner’s exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach.”

SC-5.09 ACCEPTANCE OF BONDS AND INSURANCE; OPTION TO REPLACE:

Revise paragraph 5.09.A to read as follows :

“If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the Owner may elect to obtain equivalent bonds or insurance to protect its interests at the expense of Contractor, and a Change Order shall be issued to adjust the Contract Price accordingly.”

SC-6.02.B LABOR; WORKING HOURS:

Add the following sentence to Section 6.02.B. of the General Conditions:

Working hours for the City of McLendon-Chisholm are between 7:00 a.m. and 6:00 p.m. Monday through Friday for this project.

SC-6.06 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS:

Revise paragraph 6.06.A to read as follows :

“Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner has reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the

Work against whom Contractor has reasonable objection.”

Add the following sentence to paragraph 6.06.A of the General Conditions:

"CONTRACTOR shall not award Work under the Contract to a Subcontractor(s) that is (are) in excess of 50% of the total contract price without written approval of the OWNER."

SC-6.07 PATENT FEES AND ROYALTIES:

Delete “arbitration or other” from paragraph 6.07.B and 6.07.C.

SC-6.08.A PERMITS:

Add the following paragraph to GC 6.08.

- B. “Under the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et.seq.; the Act), except as provided by NPDES General Permits for Storm Water Discharges from Construction Activities Part I, as published in Federal Register/Vol. 63, No. 128/Monday, July 6, 1998 for disturbances 5 acres or greater and Part II, as published in Federal Register/Vol. 64, No. 235/Wednesday, December 8, 1999 for disturbances less than 5 acres but greater than or equal to 1 acre. Federal law prohibits discharges of pollutants in storm water from construction activities without a National Pollutant Discharge Elimination System Permit (NPDES). Operator(s) of construction sites where 1 or more acres are disturbed, smaller sites that are part of a larger common plan of development or sale where there is a cumulative disturbance of at least 1 acre, or any site designated by the Director, must submit an NOI to obtain coverage under an NPDES Storm Water Construction General Permit.

For the purpose of this project the contractor shall be the “OPERATOR”. If required to submit a Notice of Intent (NOI) for storm water discharges associated with construction activities under the NPDES General Permit with EPA, the contractor shall submit the NOI at least two (2) days prior to commencement of construction. In addition to submitting the NOI, the Contractor shall prepare and retain on-site a Storm Water Pollution Prevention Plan in accordance the EPA requirements.”

SC-6.09 LAWS AND REGULATIONS

Delete “arbitration or other” from paragraphs 6.09.B.

SC-6.10.A TAXES:

Add a new paragraph immediately after Paragraph 6.10.A:

“Owner is exempt from payment of sales and compensating use taxes of the State of Texas and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
2. Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.”

SC-6.11 USE OF SITE AND OTHER AREAS:

Revise paragraph 6.11.A.2 to read as follows:

“Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by mediation or other dispute resolution proceeding agreed upon by the parties or at law.”

Delete “arbitration or other” from paragraphs 6.11.A.3

Add the following paragraphs to GC-6.11:

- "E. *Revegetation of Unpaved Areas:* The Contractor shall revegetate unpaved areas disturbed by construction prior to acceptance of the project. Revegetation shall consist of seed sowing, straw mulching, fertilizing and watering. Revegetation shall be acceptable when vegetation growth achieves one (1) inch in height, with 85% coverage, and no greater than 10 square feet bare. The cost for revegetation of unpaved areas shall be subsidiary to the various items in the bid form unless otherwise provided as a separate pay item.”
- "F. *Replacement of Fences:* All fences encountered and removed during construction of this project shall be restored to the original or a better than original condition upon completion of this project. Where wire fencing, either wire mesh or barbed wire is to be crossed, the Contractor shall set cross-braced posts on each side of the permanent easement before the fence is cut. Should additional fence cuts be necessary, the Contractor shall provide cross-braced posts at each point of the proposed cuts in addition to the cross-braced posts provided at the permanent easement limits, before the fence is cut. The cost for fence removal, temporary closures and replacement shall be subsidiary to the various items bid in the project proposal. Therefore, no separate payment shall be allowed for any service associated with this work."
- "G. *Protection of Trees, Plants, and Soil:* All property along and adjacent to the Contractor's operations, including lawns, yards, shrubs, trees, etc., shall be preserved or restored after completion of the work, to a condition equal to or better than existed prior to start of the work. Trees that are to remain are identified on the plans and boring may be required to preserve the designated trees.

Any trees or other landscaped features scarred or damaged by the Contractor's operations shall be restored or replaced at the Contractor's expense. Trimming or pruning to facilitate the work will be permitted only by experienced workmen in an approved manner and only with the property owner's permission. Pruned limbs of 1" (one) diameter or larger, shall be thoroughly treated as soon as possible with a tree wound dressing.

The Contractor shall take all precautions required to prevent soil erosion during construction. If excessive erosion occurs, the Contractor shall take immediate measures to prevent further erosion and restore the disturbed surface with topsoil at completion of the work. No separate payment will be made for this work."

- "H. *Underground Facilities:* All Underground Facilities along and adjacent to the Contractor's operations including septic tanks, drainfields, sprinkler systems, butane tanks, etc., shall be preserved or restored after completion of the work, to a condition equal to or better than existed prior to start of the work. No separate payment will be made for this work."
- "I. *Impairment of Access:* Contractor shall make every reasonable effort to assure that adequate access is maintained to adjacent properties during the project. If conditions exist, occur or are encountered by the Contractor that will result in or cause any delay in the Contractor's performance of any part of the work beyond the time specified in the Agreement, Contractor shall take all reasonable steps necessary to assure that such prolonged performance does not materially or substantially impair access to adjoining businesses and properties, whether such impairment is inherently caused by the nature of the work, by the placement of temporary barriers by the Contractor or by any other cause. **Contractor covenants and agrees to indemnify, hold harmless and defend Owner, its officers, agents, servants and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorneys fees and court costs and other incidental litigation expenses, occasioned by or arising out of any claim or lawsuit, whether real or asserted, relating to such unnecessary or unreasonable impairment of access, whether based upon inverse condemnation, unnecessary or illegal taking of property or any other cause of action.**"
- "J. *TxDOT Utility Requirements:* The Contractor shall comply with the rules, regulations, and policies of the Texas Department of Transportation related to utility construction within TxDOT controlled right-of-way. The Contractor shall be responsible for installing erosion and sedimentation controls and instituting traffic control measures consistent with TxDOT requirements."

SC-6.12 RECORD DOCUMENTS:

Add the following sentence to paragraph 6.12 of the General Conditions:

"Drawings submitted upon completion of the project will be submitted by the CONTRACTOR on full size set of construction plans."

SC-6.13 SAFETY AND PROTECTION:

Revise paragraph 6.13.A.3 of the General Conditions to read as follows:

"other property at the site or adjacent thereto, including trees, shrubs, lawns, lawn irrigation systems, . . . "

Add the following paragraphs to Article 6.13.B of the General Conditions:

"The Contractor shall comply with the provisions of the Occupational Safety and Health Act of 1970, and all amendments thereto, and the standards and regulations issued thereunder and warrant that all work, materials, and products furnished under this contract will conform to and comply with said standards and regulations which are in existence on the date of this contract. The Contractor further agrees to indemnify and hold harmless the Owner and the Engineer for all damages suffered by the Owner and the Engineer as a result of the Contractor's failure to comply with the Act and the Standards issued thereunder and for the failure of any material and/or

equipment furnished under this contract to so comply."

"The Contractor shall also comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., if not in conflict with those of the Occupational Safety and Health Act of 1970, including all amendments thereto, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment or work under the contract."

"The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his equipment and employees, and for any damage which may result from their failure or their improper construction, maintenance or operation."

"Per Texas House Bill 1569 effective as of September 1, 1989, it shall be the responsibility of the contractor to provide and maintain a viable trench safety system at all times during construction activities. The contractor is directed to become knowledgeable and familiar with the standards as set forth by the Occupational Safety and Health Administration (OSHA) for trench safety that will be in effect during the period of construction of the project and the contract is responsible for conforming to such regulations as prescribed by OSHA standards. A bid item for trench excavation safety protection and shoring is included in the proposal."

SC-6.17 SHOP DRAWINGS AND SAMPLES:

Amend the first sentence of paragraph 6.17.A of the General Conditions to read as follows:

"After checking and verifying all field measurements and after complying with applicable procedures specified herein, CONTRACTOR shall submit to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawing Submissions, or for other appropriate action, if so indicated in the Supplementary Conditions, a number of copies such that the ENGINEER can retain five copies of all Shop Drawings, which will bear a stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibility under the Contract Documents with respect to the review of the submission."

SC-6.20 INDEMNIFICATION:

Delete "arbitration or other" from paragraphs 6.20.A.

SC-6.22 WAGE RATES:

Add a new paragraph to ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES of the General Conditions as follows:

"6.22 Wage Rates

- A. The prevailing wage rates applicable for this project are attached and made a part of these Contract Documents. Wages not less than these rates must be paid on this project."

SC-12.03 DELAYS:

Delete "arbitration or other" from paragraph 12.03.D.

SC-13.03 TESTS AND INSPECTIONS:

Add a new paragraph G.C. 13.03.B.4 to the General Conditions to read as follows:

“4. for tests or inspections resulting from failure of initial test and inspections. The CONTRACTOR shall be responsible for payment of these tests and inspections.”

SC-13.04 UNCOVERING WORK:

Delete “arbitration or other” from paragraph 13.04.C.

SC-13.06 CORRECTION OR REMOVAL OF DEFECTIVE WORK:

Delete “arbitration or other” from paragraph 13.06.A.

SC-13.07 ONE YEAR CORRECTION PERIOD:

Revise the title of paragraph 13.07 of the General Conditions to read "TWO YEAR CORRECTION PERIOD" and revise the content of paragraphs 13.07, 13.07.A, 13.07.B, 13.07.C and 13.07.D to reflect "two (2) years" where "one (1) year" is indicated.

Delete “arbitration or other” from paragraph 13.07.B.

SC-13.08 ACCEPTANCE OF DEFECTIVE WORK:

Delete “arbitration or other” from paragraph 13.08.A.

SC-13.09 OWNER MAY CORRECT DEFECTIVE WORK:

Delete “arbitration or other” from paragraph 13.09.C.

SC-14.01 SCHEDULE OF VALUES:

Delete paragraph 14.01 of the General Conditions in its entirety and replace with the following paragraph:

"The schedule of values submitted as provided in paragraph 2.05.B.3 will serve as the basis for progress payments, subject to acceptance by ENGINEER, and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed."

SC-14.02.A.1 APPLICATIONS FOR PAYMENTS:

Add a new sentence to the end of paragraph 14.02.A.1 of the General Conditions to read as follows:

"Prior to submitting Application for Payment to Engineer for review, the Contractor shall obtain the Project Inspector's signature verifying that record documents have been updated to reflect variations from the "As Bid" drawings up to the date for which the Contractor seeks payment."

SC-14.02.C REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

Revise the last sentence of paragraph 14.02.C.1 of the General Conditions to read as follows:

"Thirty (30) days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due and when due will be paid by Owner to Contractor."

SC-14.08 FINAL COMPLETION DELAYED:

Revise paragraph 14.08.A to read as follows:

"If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer and Owner so confirm, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims."

SC-14.09 WAIVER OF CLAIMS:

Revise paragraph 14.09.A.1 to read as follows:

"a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens or claims by third parties filed against Owner or Contractor arising out of or related to the Work, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and"

SC-15.02 OWNER MAY TERMINATE FOR CAUSE:

Delete "arbitration or other" from paragraph 15.02.C.

Revise paragraph 15.02.D to read as follows:

"Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven (7) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice. Contractor's successful compliance with this section shall be determined in the sole discretion of Owner,"

Revise paragraph 15.02.F to read as follows:

"The termination procedures of Paragraphs 15.02.B and 15.02.C shall supersede any conflicting termination procedures set forth in a performance bond provided by Contractor."

SC-15.03 OWNER MAY TERMINATE FOR CONVENIENCE:

Delete “arbitration or other” from paragraph 15.03.A.3

SC-15.04 CONTRACTOR MAY STOP WORK OR TERMINATE:

Revise paragraph 15.04.B to read as follows:

“In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any undisputed sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor’s stopping the Work as permitted by this Paragraph.”

SC-16.01 METHODS AND PROCEDURES:

Revise paragraph 16.01.A to read as follows:

“Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be performed by a party acceptable to all parties and the process shall be governed by standard mediation practices; arbitration shall not be required, but may be agreed upon by the parties involved in the Claim or dispute. Timely submission of the request shall stay the effect of Paragraph 10.05.E.”

Revise paragraph 16.01.B to read as follows:

“Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by agreement of the parties.”

Revise paragraph 16.01.C to read as follows:

“If the Claim is not resolved by mediation, Engineer’s action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:”

Delete paragraph 16.01.C.1

SC-17 MISCELLANEOUS:

Add the following paragraphs to Article 17 of the General Conditions:

"17.07 *Explosives*

A. The use of explosives will not be allowed under this contract for the construction of the proposed facilities without approval of the ENGINEER and OWNER."

"17.08 *Use of Domestic Construction Materials*

The Contractor is encouraged to abide by the Buy American Provision of Public Law 95-217 (Section 215) of Public Law 92-500 as amended) generally requiring that preference be given to the use of domestic construction materials in the performance of this contract."

"17.09 *Field Office*

The Contractor will not be required to furnish a field office on this contract."

SC-18 PAY ITEMS:

Add a new Article to the General Conditions entitled ARTICLE 18 - PAY ITEMS with the following paragraphs to be included:

Any and all Work specifically called for in the Contract Documents or which is required for the proper construction of items called for in the Contract Documents is to be performed by CONTRACTOR unless specifically indicated otherwise. The cost of all work for which there is no separate pay item in the proposal shall be included in the price for a related pay item such that work called for or required by the Contract Documents will be constructed for the Contract Price.

The following descriptions are intended to clarify the nature of the work required for this project. The provisions of the standard technical specifications shall apply, except as otherwise noted herein. Pay items shall be measured for payment and paid for as described within the specifications (Division 2 through 8 of the Standard Specifications for Public Works Construction adopted by the North Texas Council of Governments Fifth Edition in November 2017) unless specifically amended herein.

"Each pay item includes all labor, materials, equipment and incidentals necessary to construct that item. The contract shall be awarded based on the "TOTAL BID" or the "TOTAL BASE BID" and "TOTAL ALTERNATE BID" depending on whether the project can be constructed with the alternate bid items included, for the funding that the Owner has budgeted."

Bid Item #1 - Mobilization

The work under this item shall include the establishment of the offices and other facilities on the project site and the movement of personnel, construction equipment and supplies to the project site or to the vicinity of the project site in order to enable the Contractor to begin work on the contract. The cost of all bonds and insurance for the project will also be considered part of this specification.

Mobilization will be measured as a lump sum (LS) item as the work progresses. Partial payments for mobilization shall be paid for at the Total Unit Price as shown in the bid proposal with the regular monthly estimates as follows: the adjusted contract amount for construction items as used below is defined as the total contract amount less the lump sum bid for Mobilization.

- a. When 1% and less than 5% of the adjusted contract amount for construction items is completed, 50% of the mobilization lump sum bid will be paid.
- b. When 5% and less than 10% of the adjusted contract amount for construction item is completed, 75% of the mobilization lump sum bid will be paid. Previous payments under this section will be deducted from this amount.
- c. When 10% or more of the adjusted contract amount for construction items is completed 95% of the mobilization lump sum bid will be paid. Previous payments under this section will be deducted from this amount.
- d. Payment for the remainder of the lump sum bid for “Mobilization” will be made on the final estimate.

This pay item shall encompass mobilization costs for the entirety of the sanitary sewer improvements project.

Bid Items #2, - 12” SDR-26 PVC Pipe, by Open Cut:

This work includes the furnishing and installation of SDR 26 PVC sanitary sewer line at the locations shown in the plans as per NCTCOG (Fifth Edition – November 2017) Standard Specifications Item 501.17. POLYVINYL CHLORIDE (PVC) WASTE WATER PIPE & FITTINGS WITH DIMENSIONAL CONTROL, Item 505. OPEN CUT – GENERAL CONDUIT INSTALLATION, Item 507. OPEN CUT – WASTEWATER CONDUIT INSTALLATION, and the City of McLendon-Chisholm Engineering and Construction Standards. Payment shall include furnishing, hauling and laying of pipe shown on the plans, trench excavation, and backfilling, including embedment material as specified, protecting or replacing existing structures or utilities, testing, disposal of surplus materials, and cleaning up and maintenance. Payment shall include any and all extra precautions or construction requirements necessary to adequately protect and support both existing utilities, and existing pavement outside of pavement removal limits shown on plans. Payment for the pipelines shall include all costs required to have utility companies repair any damage inflicted to their lines by the Contractor and any cleanup, property damages, fines, etc. resulting from damage inflicted to any utility line by the Contractor. Construction material testing in accordance with specifications is considered subsidiary to the price bid.

Measurement and payment shall be made on the basis of price bid per linear foot (LF) measured horizontally and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work, including all excavation, embedment and backfill; any intermediate taps necessary for testing & disinfecting.

Bid Item #3, #4 – 12" Bore w/ 20" Steel Casing:

This work includes the furnishing and installation of 18” steel casing pipe at the locations shown in the plans as per NCTCOG (Fifth Edition – November 2017) Standard Specifications Item 501.9. STEEL PIPE AND FITTINGS, and trenchless installation as shown in the plans as per NCTCOG (Fifth Edition – November 2017) Standard Specifications Item 503. TRENCHLESS INSTALLATION, TxDOT highway crossing specifications and the City of McLendon-Chisholm Engineering and Construction Standards. This item shall be governed by all applicable provisions accordingly.

The steel casing pipe shall have a minimum wall thickness of 0.25” as shown in the plans for the

20" casing with a minimum yield strength of 35,000 psi. The exterior surface of the steel casing pipe shall be coated in accordance with AWWA standard C203 or C214. The flowable fill backfill as specified in the plans shall be considered subsidiary to this pay item.

Measurement and payment shall be made on the basis of price bid per linear foot (LF) measured horizontally and shall include all labor, material, equipment, tools, preparation and incidentals necessary to complete the work, including all excavation, embedment and backfill (flowable fill), casing spacers, rubber boots, factory end seals, and applicable elements required for installation.

Bid Item #5 – 4' Diameter Manhole:

This work includes the furnishing and installation of 4' diameter precast reinforced concrete manholes at the locations shown in the plans as per NCTCOG (Fifth Edition – November 2017) Standard Specifications Item 502.1 MANHOLES and the City of McLendon-Chisholm Engineering and Construction Standards. This item shall be governed by all applicable provisions accordingly. Construction material testing in accordance with specifications is considered subsidiary to the price bid.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor and any other incidentals necessary to complete the work.

Bid Item #6 – 12" Stub out and plug:

This work includes the furnishing and installation of 12" stubouts at 4' diameter manholes as per NCTCOG (Fifth Edition – November 2017) Standard Specifications and the appropriate City of McLendon-Chisholm Standard Construction Details. This item shall be governed by all applicable provisions accordingly.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor and any other incidentals necessary to complete the work.

Bid Item #7 – 12" Sewer line concrete encasement:

This work shall consist of concrete encasement around the wastewater pipe as shown and noted in the construction plans. Selected pipe shall be encased with at least 6" of concrete around the pipe. The concrete for encasing shall have a minimum strength compressive strength of 3,000 psi at 28 days.

Measurement and payment shall be at the contract unit price per linear foot (LF) of concrete encasement. Payment shall be total compensation for the furnishing of all labor, materials, tools, equipment, and incidentals necessary to complete the work.

Bid Item #8 – 8" SDR 25 Sanitary Sewer Force Main Lowering:

This work shall consist of the lowering of an existing 8" sanitary sewer force main. A portion of the existing sewer force main is to be removed and reinstalled to allow for vertical clearance of the 12" sanitary sewer main associated with this project. The furnishing and installation of the sanitary sewer force main as per NCTCOG (Fifth Edition – November 2017) Standard Specifications Item 501.15 PVC Pressure Rated Pipe (SDR SERIES) and the City of McLendon-Chisholm Engineering and Construction Standards. Measurement and payment shall be at the contract unit price per linear foot (LF) of sewer pipe removal and replacement. Payment shall be total compensation for the furnishing of all labor, materials, tools, equipment, and incidentals necessary to complete the work.

Bid Items #9 - Connect to Existing Manhole Stub:

This work includes the connection to an existing sanitary sewer manhole stub Per NCTCOG (Fifth Edition - November 2017) Standard Specifications and the City of McLendon-Chisholm Engineering and Construction Standards.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor and any other incidentals necessary to complete the work.

Bid Item #10 – Existing Telephone Line lowering:

This work shall consist of the lowering of an existing telecommunications conduit. A portion of the existing telecommunications conduit is to be relocated vertically to allow for vertical clearance of the 12” sanitary sewer main associated with this project. Payment shall be total compensation for the furnishing of all labor, materials, tools, equipment, and incidentals necessary to complete the work.

Bid Items #11 – TV/Testing (per City Specs):

This work includes the TV/testing of sanitary sewer manholes and main lines Per NCTCOG (Fifth Edition - November 2017) Standard Specifications and the City of McLendon-Chisholm Engineering and Construction Standards.

Measurement and payment shall be made on the basis of price bid per linear foot (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor and any other incidentals necessary to complete the work.

Bid Item #12 – Trench Safety:

This pay item consists of the work, labor, and materials necessary for providing trench safety measures as required by law. Contractor is fully responsible for trench safety, and neither Engineer nor Owner shall bear any responsibility for such measures. This pay item shall be measured for payment by the linear foot (LF) of open trench for which trench safety measures are provided.

This item shall be governed by all applicable provisions of NCTCOG (Fifth Edition – November 2017) Standard Specifications Item 107.20.3. TRENCH SAFETY.

Bid Item #13– Revegetation (Hydromulch):

This pay item consists of the work, labor, and materials necessary for furnishing and installing all necessary revegetation. This item shall be governed by all applicable provisions of NCTCOG (Fifth Edition – November 2017) Standard Specifications Item 204.6. SEEDING TURFGRASS. Landscaping features such as small bushes that are damaged due to construction shall be replaced at equal or greater condition than existing and will be subsidiary to this pay item.

Measurement and payment shall be per square foot (SF) and shall include all labor, material, equipment, tools, preparation and incidentals necessary to complete the work.

Public Works Construction Standards

North Central Texas

Fifth Edition

Standard Specifications
Standard Drawings



North Central Texas Council of Governments

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

This Suggested Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The language contained in the Suggested Instructions to Bidders (EJCDC C-200, 2007 Edition) is also carefully interrelated with the language of this Agreement. Their usage is discussed in the Narrative Guide to the 2007 EJCDC Construction Documents (EJCDC C-001, 2007 Edition).

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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of McLendon-Chisholm, Texas (“Owner”) and
JWC Excavation, LLC. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The project involves the connection to an existing sanitary sewer manhole stub at the Southeast corner of SH 205 and FM 550 within a sanitary sewer easement and the construction of 4’ diameter manholes and 637 linear feet of 12” PVC sanitary sewer line in McLendon-Chisholm, Texas by open cut and by bore with steel encasement pipe. Approximately 57 linear feet of existing 8” sanitary sewer force main will need to be lowered as part of this project to allow for the sanitary sewer crossing at FM 550 within the City of McLendon-Chisholm, Texas.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

SH 205 & FM 550 Sanitary Sewer Improvements

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Teague, Nall and Perkins, Inc. (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Days to Achieve Substantial Completion and Final Payment*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. The Work shall be substantially completed within **60** calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **90** calendar days after the date when the Contract Times commence to run.

4.02 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.01 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.01 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.01 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined in accordance with the Contract Documents as follows:

Total of all Bid Prices (Unit Price Work) shall not exceed the sum of Four Hundred Thousand Five Hundred Eighty Five DOLLARS (\$400,585.00).

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A

of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 4.02 above and Paragraph 14.02 of the General Conditions.
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest only as expressly allowed by law within the applicable jurisdiction.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work as required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.

2. Owner's Bid Documents issued for this Project.
 3. Performance bond.
 4. Payment bond.
 5. Maintenance bond.
 6. General Conditions.
 7. Supplementary Conditions.
 8. Specifications as listed in the table of contents of the Project Manual.
 9. Drawings bearing the following general title: **SH 205 & FM 550 Sanitary Sewer Improvements**
 10. Addenda (numbers _____ to _____, inclusive).
 11. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - c. Conflict of Interest Questionnaire.
 - d. Vendor Compliance with Reciprocity on Non-Resident Bidders.
 - e. Exhibit A – Work History.
 - f. Exhibit B – Supplemental Information.
 12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above). The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency in any of the provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above in Article 9, subject to any express terms addressing and resolving conflicts within and between documents. There are no Contract Documents other than those listed above in this Article 9.

- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Savings/Severability*

- A. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of

Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Insurance

- A. The Contractor shall procure and keep in full force and effect prior to the commencement and throughout the term of this Agreement, all insurance policies specified in, and required by, the Contract Documents. Contractor shall provide appropriate Acord Forms and policies necessary to evidence the required coverage.

10.07 INDEMNIFICATION

INDEMNIFICATION. CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACT OR OMISSION OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS DIRECTORS AND REPRESENTATIVES OF CITY IN CONNECTION WITH SERVICES OR ACTS PROVIDED BY CONTRACTOR UNDER THIS CONTRACT. THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR

GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONTRACTOR SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR CONTRACTOR KNOWN TO CONTRACTOR RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONTRACTOR'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

10.08 *Immunity*

- A. The Parties agree that the Owner has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

10.09 *Assignment/Non-Transferable*

- A. The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the Owner.

10.10 *Successors and Assigns*

- A. The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

10.11 *Execution and Consideration*

- A. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

10.12 *Notices*

- A. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To Owner: Fabrice Kabona
 City Manager
 City of McLendon-Chisholm
 1371 West FM 550 McLendon-Chisholm, Texas 75032

10.13 *Cumulative Remedies*

- A. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

10.14 *Waiver of Breach*

- A. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.

10.15 *Parties Bound*

- A. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

10.16 *No Third-Party Beneficiaries*

- A. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

10.17 *Incorporation of Recitals*

- A. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.

10.18 *Entire Agreement*

- A. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for this project only and not any other matters that may exist between the Parties past, present or future.

10.19 *Venue*

- A. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Rockwall County, Texas.

10.20 *Consideration*

- A. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

10.21 *Counterparts*

- A. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

10.22 *Authority to Execute*

- A. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

10.23 *Force Majeure*

- A. Neither JWC Excavation, LLC. nor the Owner shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.

10.24 *Miscellaneous Drafting Provisions*

- A. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

10.25 *Representations*

- A. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

City of McLendon-Chisholm

By: Fabrice Kabona

Title: City Administrator

Attest:

Title:

Address for giving notices:

1371 West FM 550

McLendon-Chisholm, TX 75032

(972) 524-2077

CONTRACTOR

JWC Excavation, LLC.

By:

Title:

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

Title:

Address for giving notices:

2214 W. Blackjack Road

Aubrey, TX 76227

License No.:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

RESOLUTION NO. 2026 - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, AWARDING A CONSTRUCTION CONTRACT TO JWC EXCAVATION, LLC FOR THE SH 205 & FM 550 SANITARY SEWER IMPROVEMENTS PROJECT; APPROVING THE EXECUTION OF THE AGREEMENT AND RELATED CONTRACT DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of McLendon-Chisholm, Texas (“City”) issued a bid in November 2025 for the SH 205 & FM 550 Sanitary Sewer Improvements project in accordance with applicable state law and City procurement requirements; and

WHEREAS, the project generally consists of connecting to an existing sanitary sewer manhole stub, constructing 4-foot diameter manholes, installing approximately 637 linear feet of 12-inch PVC sanitary sewer line by open cut and bore with steel encasement, and lowering an existing 8-inch sanitary sewer force main within the City of McLendon-Chisholm; and

WHEREAS, sealed bids were received and publicly opened on December 5, 2025, and evaluated for responsiveness and responsibility in accordance with the bid documents; and

WHEREAS, the City’s consulting engineer, Teague, Nall and Perkins, Inc., reviewed the bids and recommended award of the contract to JWC Excavation, LLC as the lowest responsive and responsible bidder; and

WHEREAS, the bid submitted by JWC Excavation, LLC proposes a unit-price contract with a total contract amount not to exceed Four Hundred Thousand Five Hundred Eighty-Five Dollars (\$400,585.00); and

WHEREAS, the City Council finds that awarding the contract and approving execution of the agreement is in the best interest of the City and its residents;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF MCLENDON-CHISHOLM, TEXAS THAT:

SECTION 1. City Council hereby awards the contract for the SH 205 & FM 550 Sanitary Sewer Improvements project to JWC Excavation, LLC in an amount not to exceed \$400,585.00.

SECTION 2. City Council hereby approves the execution of the Construction Agreement, together with all related contract documents, bonds, and exhibits, as presented.

SECTION 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED THIS 13th DAY OF JANUARY, 2026

APPROVED:

Bryan McNeal, Mayor

ATTEST:

Angela Jennings, City Secretary



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider authorizing the issuance of a Request for Proposals (RFP) for disaster recovery administrative services and a Request for Qualifications (RFQ) for engineering services related to FEMA Public Assistance (PA) and Hazard Mitigation Assistance (HMA) funding administered by FEMA, the Texas Division of Emergency Management, and/or the Texas Water Development Board.

Background:

The City is seeking to proactively pursue available federal and state disaster recovery and hazard mitigation funding opportunities to support eligible projects. Specialized administrative and engineering expertise is required to assist with grant applications, compliance requirements, and project implementation associated with FEMA Public Assistance (PA) and Hazard Mitigation Assistance (HMA) programs administered by the Federal Emergency Management Agency, the Texas Division of Emergency Management, and/or the Texas Water Development Board. Issuing an RFP for administrative services and an RFQ for engineering services will allow the City to identify qualified firms to support these efforts.

Options/Alternatives:

1. City Council may approve this item.
2. City Council may deny this item.

Recommendation:

Staff recommend approval of this item, as presented.

Attachments:

- FEMA Disaster Recovery and Resiliency brochure

Presenter: Fabrice Kabona, City Manager



FEMA Services: Disaster Recovery & Resiliency

www.grantworks.net

Fostering Stronger, Smarter, More Resilient Communities.

GrantWorks is a national provider of specialized grant administration, program management, and technical consulting services for government entities and non-profit organizations. We have supported numerous Texas communities and multi-jurisdiction partnerships to both successfully recover from disasters and to develop sound, actionable, and effective hazard mitigation strategies.

FEMA Services Capabilities

- Preliminary Damage Assessments (PDAs)
- Damage Inventory (DI) Formulation
- Project Worksheet (PW) Development
- Essential Elements of Information (EEI)
- Damage Description & Dimension (DDD)
- Scope of Work Development
- Cost Estimating
- Environmental & Historic Preservation (EHP)
- Benefit-Cost Analysis (BCA)
- Insurance Claims Recovery
- Hazard Mitigation Planning
- Requests for Reimbursement
- Appeals & Audits
- Section 406 PA Mitigation
- Section 428 PA Alternative Procedures (PAAP)
- Repetitive Loss (RL) and Severe Repetitive Loss (SRL)
- 50% Rule
- Closeout

Partner with us to leverage our expertise in Disaster Recovery and Resiliency so you can concentrate on what matters most—your community.



**45+ Years' Experience
in Federal & State
Grant Industry**



**40+ Dedicated
Disaster Recovery
Project Managers**



**Successfully Secured
& Managed \$10B+
in Federal Funds**

Our FEMA Expertise

Partnering with GrantWorks can help add capacity, expertise, and knowledge to your organization to prepare for, respond to, and recover from disasters. Our FEMA Services Team will help relieve the burden of navigating the FEMA Public Assistance (PA) program post-disaster to help your community fully recover and to maximize valuable funding to further your goals. GrantWorks can also help create or update your Hazard Mitigation Plan to identify potential hazards, including viable and actionable considerations for climate change, green building, smart growth principles, and preservation of historic and cultural resources. We will also work with you to develop sound implementation and maintenance strategies. Read on to learn more about how our extensive practical experience can benefit your community before disaster strikes.

Disaster Recovery Practice Benefits

FEMA Expertise

- Extensive knowledge of FEMA PA & Mitigation Programs, including Building Resilient Infrastructure & Communities (BRIC), Hazard Mitigation Grant Program (HMGP), and Flood Mitigation Assistance (FMA).
- FEMA's current PA Program Delivery Model and the Simplified Procedures initiatives, and mastery of FEMA Grants Portal and state grant management portals.

In-house Support Team of Experts

- Specialized in GIS/mapping, financial management, business technology, environmental, procurement, Uniform Relocation Act/acquisition, construction oversight, and labor standards.

State & Federal Programs/Agencies

- Expertise braiding state/federal funds to supplement & optimize other funding programs for maximized cost recovery.
- Facilitate funding, manage necessary changes to scope and schedule, and deliver fully compliant grant management services.
- Statutes & Regulations, including the Robert T. Stafford Act, Disaster Recovery Uniform Act, 2 CFR 200, 24 CFR Part 570, Uniform Relocation Act, etc.

Contact Us



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GrantWorks FEMA Experience: By the Numbers

FEMA Public Assistance Projects

\$372 Million Grant Funds Managed:

- Hurricane Harvey
- Hurricane Beryl
- Hurricane Florence
- Hurricane Debby
- Hurricane Laura
- Hurricane Helene
- Hurricane Ian
- Hurricane Milton
- Hurricane Idalia

FEMA Hazard Mitigation - HMGP/BRIC/FMA

\$142 Million Grant Funds Managed:

- Homeowner Elevations & Reconstructions
- Hazard Mitigation Plans
- Critical Facility Generators
- Warning Siren Systems
- Drainage Infrastructure
- Drainage Plans
- Safe Rooms

FEMA Hazard Mitigation Planning - HMGP/LHMPP

\$3.7 Million Planning Grant Funds:

- 34 Projects
- 120+ Participating Entities

Texas Example Projects

- Patton Village – Harvey Public Assistance
- Seadrift – Harvey Public Assistance, HMGP, & CDBG-DR
- Willacy County – Multi-jurisdictional Hazard Mitigation Plan, 5 Participants - HUD LHMPP Funded



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider an ordinance amending Article I of Chapter 12, Traffic and Vehicles, by adding Section 12-1-006 to prohibit stopping, standing, or parking on designated residential streets, and establishing a no stopping, standing, or parking zone on the east side of Via Toscana Lane from SH 205 to the roundabout.

Background:

Via Toscana Lane is a residential roadway that connects State Highway 205 to the roundabout and serves as an important internal circulation route. Due to roadway width and traffic patterns, vehicles stopping or parking along portions of this corridor have created congestion, reduced visibility, and raised safety concerns, including restricted access for emergency vehicles.

Staff has evaluated these conditions and determined that targeted parking restrictions are necessary to improve traffic flow and enhance public safety. While the section provides general authority for future designations, this ordinance specifically applies the restriction to the east side of Via Toscana Lane between SH 205 and the roundabout.

The ordinance also:

- Authorizes installation of appropriate traffic control signage;
- Provides for enforcement upon installation of signage; and
- Establishes a penalty not to exceed \$500 per offense, consistent with City code and state law.

Fiscal Impact:

The fiscal impact associated with this action is minimal and limited to the cost of installing required traffic signage. These costs can be absorbed within the existing operating budget.

Options/Alternatives:

1. City Council may approve the Ordinance, as presented.
2. City Council may deny the Ordinance.

Recommendation:

Staff recommend approval of the Ordinance, as presented.

Attachments:

- Ordinance

Presenter: Fabrice Kabona, City Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, AMENDING ARTICLE I OF CHAPTER 12, "TRAFFIC AND VEHICLES," OF THE CODE OF ORDINANCES BY ADDING SECTION 12-1-006, "PROHIBIT STOPPING, STANDING, OR PARKING ON ONE SIDE OF DESIGNATED RESIDENTIAL STREETS"; PROHIBITING STOPPING, STANDING, OR PARKING ON THE EAST SIDE OF VIA TOSCANA LANE FROM STATE HIGHWAY 205 TO THE ROUNDABOUT; PROVIDING A PENALTY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of McLendon-Chisholm has the authority under Texas law to regulate traffic, stopping, standing, and parking on public streets within the City limits to promote public safety and welfare; and

WHEREAS, Via Toscana Lane is a residential roadway connecting State Highway 205 to a roundabout, and stopping, standing, or parking along portions of this roadway has created traffic flow, visibility, and safety concerns; and

WHEREAS, the City Council finds that restricting stopping, standing, or parking along the east side of Via Toscana Lane is necessary to improve traffic circulation and ensure safe passage for vehicles and emergency responders;

NOW, BE IT THEREFORE ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS:

SECTION 1. That Article I of Chapter 12, "Traffic and Vehicles," of the Code of Ordinances of the City of McLendon-Chisholm is hereby amended by adding Section 12-1-006, to read as follows:

“ ...

Chapter 12 Traffic and Vehicles

...

Sec. 12-1-006. Prohibit stopping, standing, or parking on one side of designated residential streets.

(a) The City Council may designate residential streets or portions thereof where stopping, standing, or parking of vehicles is prohibited on one or both sides of the roadway when such restriction is determined to be necessary for traffic flow, safety, or emergency access.

(b) Pursuant to this section, stopping, standing, or parking of any vehicle is hereby prohibited on the east side of Via Toscana Lane, beginning at State Highway 205 and ending at the roundabout, within the City limits of McLendon-Chisholm.

(c) Appropriate traffic control devices and signage shall be installed to provide notice of the restriction, and enforcement shall commence upon installation of such signage.

(d) The City Manager or designee is authorized to take all actions necessary to implement and enforce this section.

(e) No owner or operator of any vehicle shall cause or permit a vehicle to stop, stand or be parked in violation of any of the provisions of this article. There shall be a rebuttable presumption that the registered owner of a vehicle is the person who stopped, stood or parked the vehicle at the time of the offense. Each day the violation occurs or continues shall constitute a separate offense.

...”

SECTION 2. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one dollar (\$1.00) and not to exceed Five Hundred Dollars (\$500.00) for each offense. Each day a violation continues shall constitute a separate offense.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict only.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. That this ordinance shall take effect immediately from and after its passage, and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of McLendon-Chisholm, Texas, on this the 13th day of January 2026.

APPROVED:

Bryan McNeal, Mayor

ATTEST:

Angela Jennings, City Secretary



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider an ordinance amending Chapter 3, "Building Regulations" of the code of ordinances by adding Article 3.09 "Short-Term Rentals", establishing regulations for the registration, permitting, and operation of Short-Term Rentals.

Background:

The City recognizes the emergence of short-term rental properties as a growing trend across Texas and seeks to proactively establish a clear regulatory framework to protect neighborhood integrity, ensure public safety, and promote compliance with applicable building, health, and taxation codes.

The proposed ordinance is a proactive measure intended to protect the welfare of residents, promote accountability among property owners, and preserve the community's quality of life.

The ordinance:

- Requires annual permits for all STRs operating within the City limits;
- Establishes application and renewal requirements, including proof of ownership, liability insurance, and designation of a local responsible party;
- Sets operational standards addressing maximum occupancy, on-site parking, trash disposal, noise, and fire safety;
- Mandates compliance with hotel occupancy tax registration and payment provisions;
- Authorizes the City to inspect, suspend, or revoke permits for noncompliance; and
- Provides an appeal process for permit holders through the City Council.

A public hearing was held at the December 9, 2025, council meeting.

Fiscal Impact:

Adoption of the ordinance will result in new permit and renewal fee revenues and increased hotel occupancy tax collection. Administrative and enforcement costs are expected to be offset by these revenues.

Options/Alternatives:

1. City Council may approve the Ordinance, as presented.
2. City Council may deny the Ordinance.

Recommendation:

Staff recommend approval of the Ordinance, as presented.

Attachments:

- Ordinance
- STR application form

Presenter: Fabrice Kabona, City Manager



SHORT-TERM RENTAL (STR) PERMIT & REGISTRATION APPLICATION

Return completed application to:

City of McLendon-Chisholm – City Hall

1371 West FM 550 | McLendon-Chisholm, TX 75032

Phone: (972) 524-2077 | Email: -----@mclendon-chisholm.com

1. PROPERTY INFORMATION

Street Address:

Subdivision / Lot #:

Parcel ID # (if known):

Type of STR ☐ Owner-Occupied ☐ Non-Owner-Occupied

Total Bedrooms:

Maximum Occupancy (2 per bedroom + 2):

Zoning District:

2. REGISTRATION TYPE

☐ New Registration ☐ Renewal of Existing Registration

Was this property being used as a Short-Term Rental prior to the effective date of the City's STR Ordinance (Ord. No. 2025-____, adopted [insert date])?

☐ Yes ☐ No

3. OWNER INFORMATION

Property Owner Name:

Mailing Address:

City, State, ZIP:

Email Address:

Phone Number:

Note: The property owner is legally responsible for compliance with all requirements of City Code § 3.04.011 – Short-Term Rentals.

4. RESPONSIBLE PARTY

Must reside in Rockwall County and be available 24 hours a day to respond to complaints or emergencies.



Responsible Party Name:

Mailing Address:

City, State, ZIP:

Email Address:

Phone Number (24-hour):

5. REQUIRED DOCUMENTS (Attach to Application)

- ☐ Proof of property ownership (deed or tax statement)
- ☐ Copy of valid photo ID for owner and responsible party
- ☐ Site plan showing parking and driveway access
- ☐ Proof of liability insurance (minimum \$500,000 coverage)
- ☐ Self-certification form verifying compliance with building, fire, and health codes
- ☐ Hotel Occupancy Tax registration (if applicable)
- ☐ Non-Owner-Occupied Payment of \$400 application fee (check or money order to "City of McLendon-Chisholm")
- ☐ Owner-Occupied Payment of \$200 application fee (check or money order to "City of McLendon-Chisholm")

6. SEPARATION REQUIREMENT VERIFICATION

City staff will verify that the proposed Short-Term Rental is not located within 1,000 linear feet of another permitted STR, measured property-line-to-property-line, as required by Section 3.04.011 (E)(2) of the City Code.

7. OWNER CERTIFICATION

By signing and initialing below, the applicant certifies the following:

Initials

Certification Statement

- _____ I certify that all information provided in this application and accompanying documents is true and correct to the best of my knowledge.
- _____ I have read and understand the requirements of City Code § 3.04.011 – Short-Term Rentals.
- _____ I agree to operate the property in full compliance with all applicable City ordinances, State laws, and operational standards, including occupancy, parking, noise, and safety provisions.
- _____ I understand that failure to comply may result in fines of up to \$2,000 per day per offense and/or permit revocation.

Owner Signature : _____ **Date :** _____

8. RESPONSIBLE PARTY'S CERTIFICATION

I, the undersigned Responsible Party, certify that reside in Rockwall County, Texas, and that I am authorized and available 24 hours a day to respond to complaints or emergencies related to the operation of



this Short-Term Rental property. I understand and agree to comply with all requirements of City Code § 3.04.011 – Short-Term Rentals.

Responsible Party Signature: _____

Printed Name: _____

Date: _____

Notary Public, State of Texas

(Signature) _____

Printed Name: _____

My Commission Expires: _____

[Seal]

9. CITY USE ONLY

Application Received Date:

Permit No.:

Fee Paid: ☐ Yes ☐ No Amount \$ _____

Inspection Date:

Separation Verified ($\geq 1,000$ LF): ☐ Yes ☐ No

Permit Approved By:

Approval Date:

Permit Expiration (annual):

10. PERMIT CONDITIONS (Overview)

- **Term:** Permit valid for one (1) year unless revoked.
- **Non-Transferable:** New owner must reapply.
- **Display:** Permit must be posted inside the dwelling near the main entrance.
- **Renewal:** Submit renewal application at least 30 days prior to expiration.
- **Inspections:** Initial and renewal inspections are required. Refusal to allow inspection may result in revocation.

City of McLendon-Chisholm – Building Official or Designee

Signature: _____ Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, AMENDING CHAPTER 3, "BUILDING REGULATIONS," OF THE CODE OF ORDINANCES BY ADDING ARTICLE 3.09, ENTITLED "SHORT-TERM RENTALS"; ESTABLISHING REGULATIONS FOR THE REGISTRATION, PERMITTING, AND OPERATION OF SHORT-TERM RENTALS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of McLendon-Chisholm recognizes the growth of short-term rental properties within the City; and

WHEREAS, the City Council finds that it is in the best interest of the public to establish reasonable regulations for the operation of short-term rentals to protect neighborhood integrity, ensure public safety, and maintain compliance with applicable health, building, and taxation codes; and

WHEREAS, the City Council of the City of McLendon-Chisholm in compliance with the laws of the State of Texas and the ordinances of the City of McLendon-Chisholm has given the requisite notices by publication and otherwise, and have held public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested in and situated in the city's corporate boundaries, and the governing body in the exercise of its legislative discretion, has concluded that the Municipal Code of Ordinances should be amended as follows:

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF MCLENDON-CHISHOLM, TEXAS THAT:

SECTION 1. LEGAL AUTHORITY

This Ordinance is enacted pursuant to the authority granted by the Texas Local Government Code, including but not limited to Section 51.001, and other applicable provisions of State law, together with Chapter 351 of the Texas Tax Code governing municipal hotel occupancy taxes, and the City Charter and ordinances of the City of McLendon-Chisholm. This Ordinance is adopted in the exercise of the City's regulatory authority to promote the public health, safety, and general welfare of its residents by providing neighborhood sustainability and preserving property values. Having current and reliable information about the owners of Short-Term Rentals will allow the City to provide those owners with timely information on the condition of their properties and emergency contact information, to ensure collection of hotel

occupancy taxes, to protect the health and safety of guests of Short-Term Rentals and to aid in the enforcement of applicable ordinances and laws.

SECTION 2. CREATION OF ARTICLE 3.09

Chapter 3, Building Regulations, of the Code of Ordinances of the City of McLendon-Chisholm, Texas, is hereby amended to add Article 3.09 – Short-Term Rentals, which shall read as follows:

“... ”

ARTICLE 3.09 – SHORT-TERM RENTALS

Sec. 3.09.001 Purpose

The purpose of this section is to establish procedures and minimum standards for the permitting and operation of short-term rentals to ensure that such uses are compatible with surrounding neighborhoods, promote safety, and comply with applicable City and State regulations. The City Council finds that the regulation of Short-Term Rentals is necessary to balance property owners’ rights with the preservation of residential character, public safety, and neighborhood integrity. These regulations are not intended to prohibit short-term rentals but to ensure they are operated in a manner consistent with residential use patterns and public welfare. This Article does not create any right to operate a Short-Term Rental in violation of any lease, license, deed restriction, covenant, easement or other legal encumbrance.

Sec. 3.09.002. Definitions

For purposes of this section:

1. *Short-Term Rental (STR)*: A dwelling that is: (a) used or designed to be used as the home of a person, family or household, including a single-family dwelling, garage apartment, guest house or a unit in a multi-unit building, including an apartment, condominium, cooperative or timeshare; and (b) rented wholly or partly for a fee and for a period of less than thirty (30) consecutive days. The term "Short-Term Renter" does not include a premises that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space or event center purpose or another similar use; a bed-and-breakfast as defined in the City's Zoning Ordinance; or a hotel.
2. *Owner-Occupied STR*: A short-term rental where the property owner resides on-site during the rental period.
3. *Non-Owner-Occupied STR*: A short-term rental where the owner does not reside on the property during the rental period.
4. *Responsible Party*: An individual designated by the property owner who resides within Rockwall County and is available 24 hours a day to respond to complaints or emergencies related to the property.

5. *Dwelling Unit*: A building or portion of a building which is arranged, occupied or intended to be occupied as living quarters for one family and including facilities for food preparation and sleeping.
6. *Guest* — A person contracting with a Short-Term Rental for use of a residential dwelling or premises as a Short-Term Rental and the person's invitees at the Short-Term Rental.
7. *Hotel Occupancy Tax* — Hotel occupancy tax as provided for in Sec 86-72 of the City Code of Ordinances and Chapter 351 of the Texas Tax Code, as they exist or may be amended and any successor ordinances or laws.
8. *Hotel* — A building or group of buildings used as a temporary dwelling place for individuals in exchange for financial consideration where customary hotel services such as linen, housekeeping service and telephone are provided. Hotel room units are accessed through doorways into an internal hallway, courtyard or lobby. Financial consideration for Hotel room units is generally calculated on a nightly basis.
9. *Short-Term Rental Permit* — A permit issued by the City that identifies the subject property as a lawful Short-Term Rental.
10. *Director* – as used herein shall mean the City Manager or his/her designee

Sec. 3.09.003. Permit Required

1. No person shall operate, advertise, or offer a property as a short-term rental without first obtaining a valid Short-Term Rental Permit from the City. All individual units having cooking, sleeping and bathing facilities within common buildings, regardless of ownership, shall require a separate, individual permit for each unit intended to be used as a Short-Term Rental. A person commits an offense under this Article if that person owns or operates a Short-Term Rental in the City without a valid permit.
2. A permit shall be required for each individual property address.
3. Permits are non-transferable and shall be valid for one (1) years from the date of issuance unless revoked or suspended. A permit holder shall apply for renewal prior to the expiration of the permit annually on a form provided by the City Manager, or his/her designee.
4. A property owner or operator of a Short-Term Rental shall keep detailed records showing each booking and the fees paid for each rental for at least three (3) years and make this information available to the City of McLendon-Chisholm upon request.

5. Renewal applications must be submitted at least 30 days prior to permit expiration.

Sec. 3.09.004. Application Requirements

Applications shall be considered complete when all documentation required under this Article has been submitted and all permit fees have been paid. Incomplete applications will not be accepted. Applications for a Short-Term Rental Permit shall include, but not necessarily be limited to:

- Completed City permit application form obtained from the office of the City Secretary;
- Proof of property ownership;
- Responsible party contact information;
- Site plan showing required parking areas;
- Proof of liability insurance with a minimum coverage of \$500,000 per occurrence. The certificate of insurance must include the name insured, any additional insureds, the location address, the effective date, the coverage limit, and type. The owner must notify the City of McLendon-Chisholm within 30 days if the insurance status changes and provide the City with the updated insurance information;
- Self-certification of compliance with applicable codes and regulations; and
- Payment of \$400.00 application fee or as established by City Council for Non-Owner-Occupied STR
- Payment of \$200.00 application fee or as established by City Council for Owner-Occupied STR

Sec. 3.09.005. Operational Standards

1. Occupancy: Maximum occupancy shall not exceed two (2) persons per bedroom plus two (2) additional guests.

2. Separation Requirement: No Short-Term Rental property shall be located within one thousand (1,000) linear feet of another permitted Short-Term Rental. The separation distance shall be measured from the nearest property line of the subject property to the nearest property line of any existing, permitted Short-Term Rental. The City shall verify compliance with this spacing requirement prior to issuing or renewing any Short-Term Rental permit.

3. Parking: All parking shall be provided on paved or improved surfaces such as driveways or garages. On-street parking shall comply with City ordinances. Yards shall not be used to provide the necessary parking.

4. Noise: Occupants must comply with Chapter 8, Nuisances, of the City Code. Excessive noise or disturbances are prohibited. Outdoor amplified sound, gatherings, or activities are prohibited between 10:00 p.m. and 7:00 a.m. daily.

Owners and operators are strongly encouraged to install and utilize a noise monitoring device within the Short-Term Rental to assist in proactively managing noise levels and ensuring compliance with this Article and applicable City ordinances.

11. Guest Conduct: The property owner and guests shall not engage in disorderly conduct, public intoxication, illegal drug use, or any other activity that constitutes a nuisance or disturbance under Chapter 8 of the City Code.
12. Trash: All refuse must be stored in approved containers and set out only on designated collection days.
13. Signage: No signage advertising the property as a short-term rental shall be permitted on-site.
14. Permit Display: A copy of the current Short-Term Rental Permit shall be displayed inside the unit in a visible location near the main entrance.
15. Safety: Smoke detectors, carbon monoxide detectors, and at least one (1) 5-pound fire extinguisher shall be installed and maintained on each floor of the dwelling.
16. Ingress/Egress: All bedrooms/sleeping areas shall have at least one (1) operable emergency point of ingress/egress for rescue and escape (i.e., windows and/or doors) in accordance with the City's adopted codes, regulations, and ordinances.
11. Tenant Notification: (a) The property owner and/or responsible party shall post in a visible and obvious location of the Short-Term Rental the following information:
 - (1) The owner, operator or designated agent's name and twenty-four (24) hour contact telephone number;
 - (2) Pertinent neighborhood information including, but not limited to, parking restrictions, trash collection schedules and location of required off-street parking, other available parking and prohibition of parking on landscaped areas;
 - (3) Quiet hours and noise restrictions as specified under Chapter 8 of the Code of Ordinances;
 - (4) Information to assist guests in the case of an emergency posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for sheriff, fire and emergency medical services and instructions for obtaining severe weather, natural or manmade disaster alerts and updates; and
 - (5) Depiction of floor plan identifying evacuation routes, including the dwelling's exits, primary evacuation routes and secondary evacuation routes near the front door of the dwelling. (b) Each Short-Term Rental owner shall provide in the Short-Term Rental working smoke detectors in accordance with adopted codes, and at least one working type A fire extinguisher. The premises shall otherwise comply with applicable Code of Ordinance requirements, including but not limited to all building and fire codes.

Sec. 3.09.006. Inspections

1. An inspection shall be required prior to issuance or renewal of a short-term rental permit.
2. The City may conduct inspections upon receipt of a complaint or evidence of a violation.
3. Refusal to permit an inspection may result in denial, suspension, or revocation of the permit.

Sec. 3.09.007. Enforcement and Penalties

1. Operating without a valid permit constitutes a violation of this section.
2. The property owner or operator of the Short-Term Rental shall designate a Responsible Party for each Short-Term Rental. The Responsible Party is a local representative who resides in Rockwall County, is authorized to act on behalf of the owner or operator, and is available at all times while the Short-Term Rental is in use. The Responsible Party shall be capable of responding to complaints, violations, or emergency issues related to the Short-Term Rental within one (1) hour of notification by the City or its designee. Failure to designate or maintain current Responsible Party information associated with a Short-Term Rental Permit shall constitute a violation of this Article.
3. Any violation of this section may result in a fine in accordance with Section 3 of this Ordinance.
4. If, upon completion of an inspection, the premises are found to be in violation of one (1) or more provisions of the applicable City codes and ordinances, the City shall provide written notice of such violations and shall set up a subsequent inspection and date for the violation to be corrected prior to its occupancy.
5. Violations must be substantiated by credible evidence, such as verified complaints, inspection findings, or law-enforcement reports. Anonymous or unverified complaints shall not serve as the sole basis for enforcement action.
6. Three (3) or more documented violations within any twelve (12)-month period may result in permit revocation.
7. A Short-Term Rental Permit holder may be subject to permanent revocation if their Short-Term Rental Permit is revoked two (2) times due to violations of this Article or other violations of the City's safety, Health, and general welfare.
8. Each day a violation of this Article continues shall be considered a separate offense, and upon conviction shall be subject to a fine in accordance with Section 3 of this Ordinance.

9. A property owner whose permit has been revoked shall not reapply for one (1) year from the date of revocation.

10. The property owner may appeal a revocation to the City Council within ten (10) days of written notice.

Sec. 3.09.008. Hotel Occupancy Tax

All short-term rental operators shall register and remit applicable hotel occupancy taxes in accordance with Chapter 351 of the Texas Tax Code and City ordinances. Failure to timely pay any applicable hotel occupancy tax is a violation of this Article. If the arrearage is not paid within 90 days of the issuance of a delinquency notice, the Short-Term Rental permit shall be revoked.

Sec. 3.09.009. Existing Short-Term Rentals

Any short-term rental operating before the effective date of this ordinance must register and obtain a permit within ninety (90) days of adoption. Permits and nonconforming rights expire upon property transfer or failure to renew. Nothing in this section shall be construed to retroactively prohibit lawful short-term rental operations that existed prior to the adoption of this ordinance. Such uses may continue subject to registration and compliance with operational standards.

Sec. 3.09.010. Administration

The Building Official or designee shall administer and enforce this section and may adopt administrative procedures and forms necessary to implement these provisions, consistent with this ordinance.

Sec. 3.09.011. Revocation of Permit; Appeal; Administrative process

(a) Revocation of Permit. After providing an opportunity for a hearing, the Director is entitled to revoke a permit required by this Article for serious or repeated violations of any of the requirements of this Article, for violations of other applicable law relating to public health, safety or welfare and/or for interference with law enforcement officers in the performance of their duties. Prior to revocation, the Director or designee shall notify the permit holder, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the tenth (10th) calendar day following service of such notice unless a written request for a hearing is submitted to the Director by the permit holder within such ten (10) calendar day period referred to in the notice. If a written request for a hearing is received by the Director within the required time period, (1) the revocation shall not take effect unless and until the Director determines to do so in his ruling at the conclusion of the hearing; and (2) the Director shall hold a hearing and either enact or reject the revocation. At least two (2) business days before the hearing occurs, the Director shall provide the permit holder with notice of the time and place of the hearing. The permit holder shall be permitted to attend and be heard at the hearing. If no request for a hearing is filed within the ten (10) calendar day period referred to in the notice, the revocation of the permit becomes final.

(b) Appeals. An administrative decision issued in connection with the requirements of this Article, including denial of issuance or renewal or revocation or suspension of a permit required by this Article, is final unless the permit holder submits a written request for an appeal to the City Council. The appeal shall be filed in writing within ten (10) calendar days of the date of notice of the administrative decision. At least two (2) business days before the appeal hearing occurs, the City shall provide the permit holder with notice of the time and place of the hearing. The permit holder shall be permitted to attend and be heard at the hearing. The City Council shall hear and rule on the appeal within thirty (30) calendar days after notice of the appeal. The City Council shall have the power to reverse a decision of the Director where it finds that the basis for such decision was not meritorious and that such a reversal will not adversely affect the public health, safety or welfare. The decision of the City Council is final. The City Council's failure to take action on any such appeal shall constitute approval of the decision by the Director or designee. (c) Administrative process. A notice required by this Section is properly served when it is delivered to the permit holder via hand-delivery, or when it is sent by registered or certified mail, return receipt requested, or when it is sent via Federal Express or any courier service that provides a return receipt showing the date of actual delivery to the last known address of the permit holder. The hearings provided for in this Section shall be conducted by the applicable regulatory authority at a time and place designated by it. The applicable regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the applicable regulatory authority.

...”

SECTION 3. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding Two Thousand Dollars (\$2,000.00) if the violation relates to zoning, the public health, sanitation or dumping of refuse; otherwise, the fine shall be in an amount not exceeding Five Hundred Dollars (\$500.00). McLendon-Chisholm also may recover a civil penalty of not more than One Thousand Dollars (\$1,000.00) for each violation of any provision of this Ordinance if McLendon-Chisholm proves that: (a) the person, firm, corporation or business entity was actually notified of the provisions of this Ordinance; and (b) after the person, firm, corporation or business entity received notice of the provisions of this Ordinance, the person, firm, corporation or business entity committed acts in violation of the provisions of this Ordinance or failed to take action necessary for compliance with the provisions of this Ordinance. Each calendar day any violation of this Ordinance continues shall constitute a separate offense. McLendon-Chisholm retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 4. That all ordinances of the City of McLendon-Chisholm, Texas in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of McLendon-Chisholm, Texas not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6. This ordinance shall take effect immediately upon passage and publication as required by law.

PASSED AND APPROVED this 13th day of JANUARY 2025.

APPROVED:

By: _____
Bryan McNeal, Mayor

ATTEST:

By: _____
Angela Jennings, City Secretary



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider a resolution authorizing the installation of eight (8) stop signs at intersections along Settlement Lane between Pullen Road and Birthright Lane.

Background:

Settlement Lane is a residential roadway located in the Heritage subdivision. The street includes multiple intersecting residential streets and has experienced increased traffic volumes as the surrounding area has developed. City staff has received concerns related to vehicle speeds and intersection safety along this corridor.

A review of existing conditions indicates that additional traffic control at key intersections would improve driver awareness, reduce speeding, and enhance overall safety for residents, pedestrians, and motorists.

The resolution authorizes the installation of eight (8) stop signs at intersections along Settlement Lane between Pullen Road and Birthright Lane. City staff will coordinate with the developer, Altura Homes, to ensure the signs are installed in accordance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD).

Options/Alternatives:

1. City Council may approve the Resolution, as presented.
2. City Council may deny the Resolution.

Recommendation:

Staff recommend approval of the Resolution, as presented.

Attachments:

- Resolution

Presenter: Fabrice Kabona, City Manager

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF McLENDON-CHISHOLM, TEXAS, AUTHORIZING THE INSTALLATION OF EIGHT (8) STOP SIGNS AT INTERSECTIONS ALONG SETTLEMENT LANE BETWEEN PULLEN ROAD AND BIRTHRIGHT LANE; PROVIDING FOR IMPLEMENTATION; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of McLendon-Chisholm, Texas, has the authority under Texas law to regulate traffic control devices on public streets within the City limits in the interest of public safety and orderly traffic flow; and

WHEREAS, Settlement Lane is a residential roadway between Pullen Road and Birthright Lane, and additional traffic control measures are necessary to improve traffic safety, reduce speeding, and protect residents and visitors; and

WHEREAS, City staff has evaluated traffic conditions and determined that the installation of stop signs at intersections along Settlement Lane will enhance roadway safety and traffic control;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF McLENDON-CHISHOLM, TEXAS, THAT:

SECTION 1. The City Council hereby authorizes the installation of eight (8) stop signs at intersections along Settlement Lane between Pullen Road and Birthright Lane, at locations determined appropriate by City staff.

SECTION 2. The City Manager or designee is authorized to take all necessary actions to procure, install, and maintain the stop signs in compliance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD) and all applicable standards.

SECTION 3. All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict only.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portions of this resolution.

SECTION 5. This resolution shall take effect immediately upon adoption.

DULY PASSED and approved by the City Council of the City of McLendon-Chisholm, Texas, on this the 13th day of January 2026.

ATTEST:

THE CITY OF MCLENDON-CHISHOLM

Angela Jennings, City Secretary

Bryan McNeal, Mayor



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider appointing two members on the Planning & Zoning Commission and one member to the Board of Adjustments as an alternate.

Background:

There are vacancies on both Planning and Zoning Commission and the Board of Adjustments. One alternate position on Board of Adjustment and both a primary member position and two alternate positions on Planning and Zoning Commission.

Staff recommends the following appointments:

- Quentin Breckenridge as an alternate to the Board of Adjustment;
- Gerald Neatherlin moved from alternate to primary member of Planning and Zoning Commission; and
- Adam Bailey as alternate member on the Planning and Zoning Commission.

These appointments will fill the vacancies for the Board of Adjustments and leave only one vacant alternate position on the Planning and Zoning Commission.

Options/Alternatives:

1. City Council may approve the request, as presented.
2. City Council may deny the request.

Recommendation:

Staff recommends approval of the request, as presented.

Presenter:

Angela Jennings, City Secretary



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider a resolution adopting a Boards, Committees, and Commissions attendance and reappointment policy.

Background:

The City of McLendon-Chisholm relies on appointed boards, committees, and commissions to advise the City Council and City staff on a variety of policy, planning, and operational matters. Regular attendance and active participation by appointed members are essential to ensuring these bodies function effectively and fulfill their intended purpose.

Historically, attendance expectations have been addressed informally. The proposed policy provides a clear, standardized framework applicable to all City boards, committees, and commissions.

The proposed policy establishes the following key provisions:

- **Minimum Attendance Requirement:** Members must attend at least 65% of regular and special meetings in a calendar year to remain in good standing.
- **Excused Absences:** Members may receive up to three excused absences per calendar year for specified circumstances, including illness, bereavement, childbirth or adoption, and military service.
- **Automatic Removal:** Members may be removed for failure to meet attendance thresholds or for missing three consecutive regular meetings, unless absences are excused under the policy.
- **Reappointment Eligibility:** Members must attend at least 75% of meetings during their term to be eligible for reappointment.
- **Remote Participation:** The policy clarifies when remote participation is permitted and confirms that remote attendance may count toward quorum and voting, consistent with applicable law.
- **Administrative Oversight:** The City Secretary is responsible for tracking attendance, issuing notices, and maintaining official records, with staff advisors providing attendance reports as required.

Collectively, these provisions promote fairness, transparency, and accountability while providing flexibility for legitimate excused absences.

Options/Alternatives:

1. City Council may approve the Resolution, as presented.
2. City Council may deny the Resolution.

Recommendation:

Staff recommend approval of the Resolution, as presented.

Attachments:

- Resolution
- Boards, Committees, and Commissions Attendance Policy

Presenter: Fabrice Kabona, City Manager

RESOLUTION NO. 2026 - ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
McLENDON-CHISHOLM, TEXAS, ADOPTING A BOARDS,
COMMITTEES, AND COMMISSIONS ATTENDANCE AND
REAPPOINTMENT POLICY; PROVIDING FOR
IMPLEMENTATION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council of the City of McLendon-Chisholm, Texas (“City”), appoints members to various boards, committees, and commissions to advise the City Council and City staff; and

WHEREAS, the effective operation of City boards, committees, and commissions requires regular attendance and active participation by appointed members to ensure transparency, accountability, and the efficient conduct of City business; and

WHEREAS, City Council desires to establish uniform standards governing attendance, removal, reappointment eligibility, and remote participation for members of City boards, committees, and commissions; and

WHEREAS, City Council has reviewed the proposed Boards, Committees, and Commissions Attendance and Reappointment Policy, attached hereto as Exhibit “A” and incorporated herein by reference;

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL
OF MCLENDON-CHISHOLM, TEXAS THAT:**

SECTION 1. The Boards, Committees, and Commissions Attendance and Reappointment Policy, attached hereto as Exhibit “A”, is hereby adopted as an official policy of the City of McLendon-Chisholm.

SECTION 2. The policy adopted herein shall apply to all City boards, committees, and commissions, regardless of appointing authority, unless otherwise expressly provided by state law, City ordinance, or City Charter.

SECTION 3. The City Manager and City Secretary are hereby authorized and directed to take all actions necessary to implement and administer the policy, including monitoring attendance, issuing required notices, maintaining official records, and ensuring compliance.

SECTION 4. This resolution shall become effective January 13, 2026, and shall apply prospectively in accordance with the terms of the adopted policy.

SECTION 5. All resolutions or parts thereof in conflict with this resolution are hereby repealed to the extent of such conflict.

PASSED AND APPROVED by the City Council of the City of McLendon-Chisholm, Texas, on this the 13th day of JANUARY, 2026.

APPROVED:

Bryan McNeal, Mayor

ATTEST:

Angela Jennings, City Secretary



Boards, Committees, and Commissions Attendance and Reappointment Policy

Effective January 13, 2026

SECTION 1. ATTENDANCE POLICY

In order for a board, committee, or commission to be effective and efficient, and to accomplish its purpose, its membership must be actively involved and attendant to the business of the body.

Therefore, all members are required to attend at least 65% of the regular and special meetings of the body held in any one calendar year. Excused absences shall not count toward the 65% attendance requirement. Members shall be permitted up to three excused absences per calendar year in the following circumstances:

- Illness or medical-related absences
- Funerals and/or bereavement
- The birth or adoption of the board member's child, for 90 days after the birth or adoption
- Military service
- Excused absence requests should be formally made in writing via email to both the City Secretary and the board's staff advisor within one week of the date of the missed meeting.
- Any absence that does not meet the above criteria shall be considered unexcused.

On January 1 of each year, a member of any board, commission, or committee appointed by the Mayor, Council, or City Manager shall be automatically removed from said body for failure to attend at least 65% of all regular and special meetings of the body held during the immediately preceding calendar year. For persons not serving for an entire calendar year, the 65% attendance requirement shall apply to meetings held during the portion of the year during which the person served.

In order to be eligible for reappointment to a board, committee, or commission, a member must have attended at least 75% of the regular and special meetings of the body during the concluding term, or portion of the term during which the member served.

In addition, any member of a board, commission, or committee shall be automatically removed from said body for failure to attend any three consecutive regular meetings of the body, unless an absence is deemed excused under this policy.

A member must attend at least 50% of a meeting in order to be considered in attendance for purposes of this policy.

Members appointed in the fourth quarter of the year shall be exempt from the 65% attendance requirement for that calendar year only but shall remain subject to the three-consecutive-meeting rule.



Remote participation by members of boards, committees, and commissions shall be governed exclusively by the Texas Open Meetings Act, including Texas Government Code Section 551.127.

The City Secretary shall send written notice to any member removed from a board, committee, or commission for failure to meet the attendance policy. Vacancies shall be filled in the same manner as initial appointments.

The City Secretary shall also notify any member who is in danger of violating the attendance requirement.

Staff advisors shall file attendance reports with the City Secretary pursuant to the schedule established by the City Secretary.

This policy shall apply to every member of a board, committee, or commission, regardless of appointing authority.

SECTION 2. **REMOTE PARTICIPATION**

Boards, committees, or commissions serving in an advisory capacity may determine the feasibility of remote participation in accordance with applicable law, City Council Rules of Procedure, and the body's adopted rules.

Boards, committees, or commissions serving a quasi-judicial function or engaging in final decision-making shall meet in person as required by law.

Members participating remotely may fully participate in discussions and votes, and such participation shall count toward quorum requirements.

All votes by remotely participating members shall be conducted by audible roll call. The presiding officer shall announce the vote results and quorum status.



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider an ordinance approving the order of a special election for the abolition of an additional sales and use tax within the McLendon-Chisholm city limits at the rate of 0.5% and the adoption of a local sales and use tax at the rate of 0.5% to provide revenue for maintenance and repair of municipal streets.

Background:

The City of McLendon-Chisholm currently levies an additional one-half of one percent (0.5%) local sales and use tax that is used to reduce the City's property tax rate, as authorized under Texas Tax Code Section 321.101. State law allows municipalities to repeal or reallocate such a sales and use tax, subject to voter approval at a properly ordered special election.

Last May, voters approved abolishing this tax and readopting it to generate revenue for either public safety or the maintenance and repair of municipal streets. Following the election, the Comptroller rejected the measure due to the use of the "or" language. Staff believes these funds are best utilized for the maintenance and repair of City streets and is therefore bringing this item back with Comptroller-approved language that dedicates the revenue exclusively to street maintenance and repair.

The proposed ordinance orders a special election to be held on May 2, 2026.

The purpose of the ordinance is to:

- Order a special election in accordance with the Texas Election Code;
- Repeal the one-half of one percent (0.5%) sales and use tax currently used to reduce the property tax rate and earmark the same tax for maintenance and repair of municipal streets.

Fiscal Impact:

If approved by voters, the proposition would result in a reallocation of existing sales tax revenue rather than an increase in the overall tax rate.

Options/Alternatives:

1. City Council may approve the Ordinance, as presented.
2. City Council may deny the Ordinance.

Recommendation:

Staff recommend approval of the Ordinance, as presented.

Attachments:

- Ordinance

Presenter: Jeff White, Finance Director

ORDINANCE NO. 2026-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS APPROVING THE ORDER OF A SPECIAL ELECTION FOR THE PURPOSE OF THE ABOLITION OF AN ADDITIONAL SALES AND USE TAX WITHIN THE MCLENDON-CHISHOLM CITY LIMITS AT THE RATE OF 0.5 PERCENT AND THE ADOPTION OF A LOCAL SALES AND USE TAX IN MCLENDON-CHISHOLM AT THE RATE OF 0.5 PERCENT TO PROVIDE REVENUE FOR MAINTENANCE AND REPAIR OF MUNICIPAL STREETS.

WHEREAS, the Texas Local Government Code provides special elections to be held on an authorized uniform election date as provided by Chapter 41 of the Texas Election Code; and

WHEREAS, Chapter 41 of the Texas Local Government Code provides that the first Saturday in May, being May 2, 2026, is an authorized uniform election date for municipal elections; and

WHEREAS, the Texas Election Code requires that the governing body of the City is responsible for ordering the special election for determining whether or not to repeal the sales and use tax within the city at the rate of one half of one percent used to reduce the property tax rate as allowed under Tax Code Section 321.101 ; and

WHEREAS, the City will hold a special election on May 2, 2026 for the purpose of whether or not to repeal the sales and use tax rate within the city at the rate of one half of one percent being used to reduce the property tax rate. The one half of one percent sales tax shall be earmarked and used to provide revenue for maintenance and repair of municipal streets.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS:

SECTION 1 . The recitals set forth in the WHEREAS clauses of this ORDINANCE are true and correct, constitute findings and determinations by the City Council acting in its legislative capacity and are incorporated herein.

SECTION 2, That the City Council hereby approves the City of McLendon-Chisholm, Texas Order of Special Election for the purpose of submitting to the voters the question of whether to repeal the sales and use tax used to reduce the property tax rate, as allowed under Tax Code Section 321.101, for all purposes and authorizes the Mayor and Council Members to execute the Order. The ballot to be used in such election shall be, as closely as can be provided by the equipment and ballots provided by the Rockwall County Elections Administration, in the following form:

PROPOSITION A

REPEAL THE SALES AND USE TAX WITHIN THE CITY WHICH IS A RATE OF ONE-HALF OF ONE PERCENT AND IS USED TO REDUCE PROPERTY TAX RATE AND EARMARK SAID ONE HALF OF ONE PERCENT SALES AND USE TAX TO PROVIDE REVENUE FOR MAINTENANCE AND REPAIR OF MUNICIPAL STREETS.

"FOR"

"AGAINST"

SECTION 3. The entire City shall constitute one election precinct for this election and the election precincts listed in elections contract with Rockwall County are hereby designated the polling place. The election officers and maximum number of clerks for said polling place shall be determined and appointed in accordance with the provisions of the Contract.

On Election Day, the polls shall be open from 7:00 A.M. to 7:00 P.M.

Early voting by personal appearance shall also be conducted at the locations listed in the elections contract with Rockwall County as Exhibit "A". City of McLendon-Chisholm voters may vote at any of the additional Early Voting locations open under full contract services with the Rockwall County Elections Administration. If the election services contract with the Rockwall County Elections Administrator revises the polling places listed previously, the City will utilize the polling places designated in said Election Services Contract, as the same may be amended from time to time.

Applications for ballot by mail shall be received and processed by the Rockwall County Elections Administrator, Christopher J Lynch, located at **1101 E Yellow Jacket Ln Suite 150, Rockwall, Texas 75032**. Applications for ballots by mail must be received **no later than the close of business on April 20, 2026**.

Early voting for the General, Election shall begin **Monday April 20, 2026** and ends **Tuesday, April 28, 2026**, and the dates and hours designated for early voting by personal appearance at the early voting locations shall be determined in accordance with the provisions of Contract.

For purposes of processing ballots cast in early voting, the election officers for the early voting ballot board for this election shall be appointed and designated in accordance with the provisions of the Contract.

SECTION 4. All ballots shall be prepared in accordance with Texas Election Code. Paper ballots shall be used for early voting and for voting on Election Day. In accordance with Section 61.012 of the Texas Election Code, the City will provide, in every polling

place, at least one voting station that is accessible to a voter with disabilities. All expenditures necessary to conduct the election, purchase materials, and the employment of all election officials are hereby authorized in accordance with the Texas Election Code.

SECTION 5. Notice of this election shall be given in accordance with the provisions of the Texas Election Code and returns of such notice shall be made as provided for in said Code. The Mayor shall issue all necessary orders and writs for such election, and returns of such election shall be made to the City Secretary after the closing of the polls.

SECTION 6. All ordinances and resolutions, or parts thereof, which are in conflict or or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 7. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 8. This Ordinance shall take effect immediately upon its passage.

DULY PASSED AND APPROVED THIS THE DAY OF , 2026

APPROVED:

Bryan McNeal

ATTEST:

Angela Jennings



City of McLendon-Chisholm

Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider approval of an ordinance establishing a Hotel-Motel Occupancy Tax Fund; providing for the collection, deposit, and use of Hotel-Motel Occupancy tax revenues.

Background:

As part of the City's recent adoption of the Short-Term Rentals (STR) Ordinance, the City will begin issuing permits to short-term rental operators located within McLendon-Chisholm. In accordance with Chapter 351 of the Texas Tax Code, short-term rental operators are required to collect and remit Hotel-Motel Occupancy Taxes (HOT) to the City.

To ensure transparency, accountability, and compliance with state law, staff recommends the formal creation of a dedicated Hotel-Motel Occupancy Tax Fund ("Hotel-Motel Fund"). Establishing this fund will provide a mechanism to receive, account for, and expend hotel-motel tax revenues solely for the promotion of tourism, conventions, and related activities that directly enhance and promote the local hotel and lodging industry.

Operational Considerations:

Under Texas Tax Code Chapter 351, municipalities may impose and administer a local hotel occupancy tax, provided the revenues are used solely for authorized purposes such as:

- Promoting tourism and the convention and hotel industry;
- Supporting visitor information and advertising programs; and
- Funding projects or events that directly enhance the visitor experience.

The proposed ordinance formally creates the Hotel-Motel Fund as a special revenue fund. All revenues derived from the City's hotel occupancy tax will be deposited into this fund and accounted for separately from the General Fund. Expenditures from the fund will be authorized only by City Council through the annual budget process or approved budget amendments.

Administrative oversight will be provided by the Finance Director under the direction of the City Manager, with annual reporting to the Texas Comptroller as required by law.

Fiscal Impact:

The establishment of the Hotel-Motel Fund does not immediately generate revenue; However, as short-term rental operators begin remitting hotel occupancy taxes to the City, the fund will generate a new restricted revenue source.

Expenditures from the fund will be limited to eligible purposes such as tourism marketing, visitor information, and related promotional efforts, as authorized by City Council through the annual budget process. The fund will enhance financial transparency by separating occupancy tax revenues from the City's general operating funds.

Options/Alternatives:

1. City Council may approve the Ordinance, as presented.
2. City Council may deny the Ordinance.

Recommendation:

Staff recommends approval of the Ordinance, as presented.

Attachments:

- Ordinance

Presenter: Fabrice Kabona, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, LEVYING A SEVEN PERCENT (7%) TAX UPON THE COST OF OCCUPANCY OF ANY SLEEPING ROOM FURNISHED BY ANY HOTEL, MOTEL OR OTHER OVERNIGHT LODGING WITHIN THE CITY OR ITS EXTRATERRITORIAL JURISDICTION USED IN ACCORDANCE WITH CHAPTER 351 OF THE TEXAS TAX CODE; PROVIDING FOR THE COLLECTION OF THE OCCUPANCY TAX; PROVIDING FOR CIVIL PENALTIES AND INTEREST FOR DELINQUENCY IN PAYING THE CITY OCCUPANCY TAX; PROVIDING FOR A FINE OF UP TO \$500 FOR VIOLATING THIS ORDINANCE AND FOR OTHER CIVIL REMEDIES; DESIGNATING THE USE OF THE REVENUE DERIVED TO THE CITY FROM THE OCCUPANCY TAX; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE AFTER PUBLICATION.

WHEREAS, Section 351.002 of the Texas Tax Code (“Code”) provides for the imposition and collection of a local municipal occupancy tax on a person using a hotel, as that term is defined in Section 156.001 of the Code and in this Ordinance; and

WHEREAS, Section 351.003 of the Code provides that a municipality may not charge more than seven percent (7%) of the price paid for a room in a hotel; and

WHEREAS, Section 351.0025 of the Code provides that a municipality of less than 35,000 may impose by ordinance the hotel occupancy tax in the municipality’s extraterritorial jurisdiction (“ETJ”); and

WHEREAS, the City Council for the City of McLendon-Chisholm, Texas finds that the population of the City is less than 35,000; and

WHEREAS, the City Council for the City of McLendon-Chisholm now deems it appropriate and in the best interest of its citizens to establish a hotel occupancy tax of seven percent (7%) on a person using a hotel in the City or in its ETJ;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS THAT:

SECTION 1. Definitions: The following word, terms, and phrases are defined as follows:

(a) *City*: The City of McLendon-Chisholm, Texas.

(b) *Hotel*: Any building or structure or improvement on property in which the public may, for a consideration, obtain sleeping

accommodations, including hotels, motels, short-term rentals, tourist homes, tourist houses, tourist courts, lodging houses, inns, rooming houses, or bed and breakfasts, air “B n B’s”, or where rooms are furnished for a consideration, but not including hospitals, sanitariums, nursing homes or other housing facilities owned and operated by institutions of higher education as described in Section 156.001 of the Code.

(c) *Consideration*: The cost of the room in a hotel only if the room is ordinarily used for sleeping and not including the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

(d) *Occupancy*: The use or possession or the right to the use or possession of any room or rooms in a hotel if the room is one which is ordinarily used for sleeping and if the occupant is other than a permanent resident as hereinafter defined.

(e) *Occupant*: Anyone who for a consideration uses, possesses, or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license, contract or agreement. The term does not include a permanent resident as hereinafter defined.

(f) *Person*: Any individual, company corporation or association owning, operating, managing or controlling any hotel within the City or the City’s extraterritorial jurisdiction.

(g) *Quarterly Period*: The regular municipal fiscal quarters of the year, the first quarter being composed of the months of October, November and December; the second quarter being the months of January, February and March; the third quarter being the months of April, May and June; and the fourth quarter being the months of July August and September

(h) *Permanent Resident*: An occupant who has or shall have the right of occupancy of any room or room in a hotel for at least thirty (30) consecutive days during the current calendar year of preceding year.

SECTION 2. Occupancy Tax Levied – Amount – Exemptions

There is hereby levied a tax upon the cost of occupancy of any hotel within the City or its extraterritorial jurisdiction where the cost of occupancy is at the rate of \$2 or more per day, such tax to be equal to seven percent (7%) of the consideration paid by the occupant of such room to such hotel, exclusive of the occupancy taxes imposed by other governmental agencies.

(a) No tax shall be imposed hereunder on a permanent resident.

(b) No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which derives to the benefit of any private shareholder or individual.

(c) No tax shall be imposed hereunder upon federal or state employees traveling on official business.

SECTION 3. Collection of Occupancy Tax

Every person owning, operating, managing or controlling any hotel within the City or its extraterritorial jurisdiction shall collect the tax levied by this Ordinance for the City of McLendon-Chisholm.

SECTION 4. Quarterly Reports to City Secretary—Audits

(a) On or before the last day of the month immediately following each quarterly period, every person required to collect the tax imposed herein shall file a report with the City Secretary showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information the City Secretary may reasonably require. Such person shall pay the amount of tax collected from the occupants during the period of the report at the time of filing the report.

(b) There shall also be furnished to the City Secretary at the time of payment of said tax, a copy of the quarterly report filed with the State Comptroller in connection with the state hotel occupancy tax.

(c) The City Secretary shall, upon reasonable notice, have access to books and records kept by any person required to collect the tax imposed herein which may be necessary to enable the City Secretary to determine the correctness of any report files as required by this section and the amount of taxes due under the provisions of the Ordinance.

SECTION 5. Civil Penalty and Interest for Delinquent Payments

(a) If any person required by the provisions of this Ordinance to collect the tax imposed herein, or make reports as required herein, and pay to the City the tax imposed herein, shall fail to collect such tax, file such report or pay such tax for at least one complete municipal fiscal quarter, the person shall pay to the City the tax due, together with a penalty of fifteen percent (15%) of the tax due that is not timely filed.

(b) In addition to the penalty set out herein, a person who fails to pay a tax due under this Ordinance shall pay the City interest on the unpaid amount at the legal rate provided by Section 111.060(b) of the Code.

SECTION 6. Criminal Penalties

If any person required by the provisions of this Ordinance to collect the tax imposed herein, or make reports as required herein, and pay to the City the tax imposed herein, shall fail to collect such tax, file such report or pay such tax, or if any such person shall files a false report, or such person shall violate any of the provisions of this Ordinance, the City is authorized to impose a misdemeanor fine for a violation of this Ordinance. A person who violates this Ordinance shall be guilty of a misdemeanor and upon conviction shall be assessed a fine not to exceed \$500.

SECTION 7. Other Civil Remedies by the City

The City is hereby authorized to take the following actions against any person required to collect the tax imposed hereby and pay the collection over to the City and who has failed to file a report, or filed a false report, or failed to pay the tax when due:

(a) Require the forfeiture of any revenue the City allowed the hotel operator to retain for its cost of collecting the tax;

(b) Bring suit against the hotel for noncompliance; and/or

(c) Bring suit against the hotel seeking any other remedies provided under Texas Law.

SECTION 8. Use of Revenue Derived from Levy of Hotel Occupancy Tax.

The proceeds of the hotel occupancy tax levied by this Ordinance may be used by the City for the sole purpose of promoting tourism and the convention and hotel industry, and that use is limited to the following:

(a) The acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation and maintenance of convention center facilities or visitor information centers, or both;

(b) The furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;

(c) Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the City or its vicinity;

(d) The encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture photograph, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;

(e) Historical restoration and preservation projects or activities or advertising and conducting solicitation and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:

(1) At or in the immediate vicinity of convention center facilities or visitor information centers; or

(2) Located elsewhere in the City or its vicinity that would be frequented by tourists and convention delegates, or other visitors to the City.

SECTION 9. Severability Clause.

If any provision, section, subsection, sentence, paragraph, sentence, clause or phrase of this Ordinance or the application of same to any person or set of circumstances, shall for any reason be held to be unconstitutional, void, or invalid or otherwise unenforceable, the invalidity or

unenforceability shall not affect other provisions of this Ordinance or their application to other sets of circumstances and to this end all provisions of this Ordinance are declared to be severable.

SECTION 10. Repealing Clause.

All City ordinances or portions of ordinances that are inconsistent or in conflict with this Ordinance.

SECTION 11. Effective Date.

This Ordinance shall become effective and be in full force after its publication as provided by law.

SECTION 12. Recitals.

That all recitals contained in this Ordinance are fully incorporated herein as if fully written.

PASSED AND APPROVED this ____ day of January 2026.

APPROVED:

By: _____
Bryan McNeal, Mayor

ATTEST:

By: _____
Angela Jennings, City Secretary



City of McLendon-Chisholm Staff Report

Date: January 13, 2026

Agenda Item: Discuss and consider a resolution awarding request for proposal (RFP) 2026-01-05 to PMG Paving, LLC for asphalt paving services and cement stabilization on Smith Rd, Connie Ln, and League Rd.

Background:

As part of the City's ongoing efforts to maintain and improve roadway infrastructure, staff issued Request for Proposals (RFP) 2026-01-05 to solicit qualified contractors for asphalt paving services utilizing asphalt reclamation with cement stabilization and a 3-inch asphalt overlay.

Based on pavement condition assessments, Smith Road, Connie Lane, and League Road were identified as priorities for maintenance needs.

RFP 2026-01-05 was advertised and administered in compliance with applicable local and state procurement requirements. We received one bid from PMG Paving, LLC for a total amount of \$2,199,472.00

Fiscal Impact:

Funding for this project will be provided from General Fund reserves (Fund balance). The resolution authorizes execution of the agreement in an amount not to exceed \$2,199,472.00

Options/Alternatives:

1. City Council may approve the Resolution, as presented.
2. City Council may deny the Resolution.

Recommendation:

Staff recommends approval of the Resolution and agreement, as presented.

Attachments:

- Resolution
- PMG Paving Proposal

- Contract

Presenter: Fabrice Kabona, City Manager

ROAD IMPROVEMENT SERVICES AGREEMENT

City of McLendon-Chisholm – Smith Rd, Connie Ln, and League Road Improvements

This Construction Services Agreement (“Agreement”) is entered into by and between the City of McLendon-Chisholm, Texas, a Texas home-rule municipality (hereinafter referred to as the “City”), and PMG PAVING, LLC, a Texas limited liability company (hereinafter referred to as the “Contractor”), collectively referred to as the “Parties.”

1. PROJECT DESCRIPTION

The Contractor shall furnish all labor, materials, equipment, supervision, and services necessary for culvert repair, asphalt paving services, and cement stabilization on Smith Rd, Connie Ln, and League Rd, in accordance with the terms and conditions of this Agreement, and consistent with the scope of work outlined in the City’s Request for Proposals (RFP No. 2026-01-05) and the Contractor’s proposal, both of which are incorporated herein by reference.

Work includes, but is not limited to:

- Asphalt road reclamation with cement stabilization and a 3-inch asphalt overlay.

2. CONTRACT AMOUNT

The total amount payable under this Agreement shall not exceed Two Million One Hundred Ninety-Nine Thousand Four Hundred Seventy-Two Dollars and Zero Cents (\$2,199,472.00). Payments shall be made based on approved invoices for work completed and accepted by the City.

3. TERM AND COMPLETION

The Contractor shall commence work upon receipt of a Notice to Proceed issued by the City and shall achieve substantial completion within the timeframe mutually agreed upon by the Parties as set forth in the project schedule. Time is of the essence in this Agreement.

4. PAYMENT TERMS

The Contractor shall submit itemized invoices no more frequently than monthly. Each invoice shall describe the work performed, materials used, and the percentage of completion. Payment shall be made by the City within thirty (30) days of receipt of an approved invoice. Retainage, if applicable, shall be withheld in accordance with Chapter 2252, Texas Government Code.

5. CHANGES AND AMENDMENTS

No change, modification, or amendment to this Agreement shall be valid unless made in writing and approved by both Parties. Any changes affecting the contract amount or scope of work shall be documented by a written Change Order approved by the City.

6. TERMINATION

The City may terminate this Agreement for convenience upon ten (10) days' written notice to the Contractor. In the event of termination, the Contractor shall be paid for work satisfactorily performed up to the date of termination. The City may also terminate this Agreement for cause if the Contractor fails to perform in accordance with its terms.

7. PERFORMANCE AND WARRANTY

The Contractor warrants that all work shall be completed in a good and workmanlike manner and in compliance with all applicable federal, state, and local laws, codes, and regulations. All work performed shall be warranted for a period of two (2) years from the date of final acceptance by the City.

The Contractor shall not be held liable for longitudinal cracking. However, in the event longitudinal cracking occurs, the Contractor agrees to maintain the affected areas through crack filling as part of routine maintenance during the bond period.

8. DELAYS AND LIQUIDATED DAMAGES

The Contractor shall perform the work diligently and in accordance with the agreed schedule. If the Contractor fails to complete the work within the agreed period, without justifiable cause, the City may assess liquidated damages in the amount of \$250 per calendar day for each day of delay beyond the completion date.

Delays caused by acts of God, inclement weather, or other events beyond the Contractor's reasonable control shall not be subject to penalties, provided written notice and supporting documentation are submitted within five (5) days of occurrence.

The Parties acknowledge that such damages are not a penalty but a reasonable estimate of actual damages sustained by the City due to delay.

9. INSURANCE AND INDEMNIFICATION

The Contractor shall maintain, at its own expense, insurance coverage including:

- Commercial General Liability: minimum \$1,000,000 per occurrence;
- Workers' Compensation: statutory limits;
- Automobile Liability: minimum \$1,000,000 combined single limit.

Certificates of insurance naming the City of McLendon-Chisholm as an additional insured shall be provided prior to commencement of work.

The Contractor agrees to indemnify, defend, and hold harmless the City, its officers, employees, and agents from and against any and all claims, damages, or liabilities arising out of or related to the performance of work under this Agreement.

THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, OR LIABILITIES ARISING OUT OF OR RELATED TO THE PERFORMANCE OF WORK UNDER THIS AGREEMENT.

10. COMPLIANCE WITH LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, and regulations of federal, state, and local governments, including all safety and environmental requirements.

11. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor and not an employee, agent, or representative of the City. Nothing in this Agreement shall be construed as creating a partnership or joint venture between the Parties.

12. ASSIGNMENT

The Contractor shall not assign or transfer this Agreement or any portion thereof without the prior written consent of the City.

13. ENTIRE AGREEMENT

This Agreement, together with any attachments or incorporated documents, constitutes the entire understanding between the Parties and supersedes all prior negotiations or agreements, whether written or oral.

14. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Rockwall County, Texas.

15. NOTICES

All notices required or permitted under this Agreement shall be in writing and delivered personally or sent by certified mail, return receipt requested, to the following addresses:

City of McLendon-Chisholm
Attn: City Manager
1371 West FM 550
McLendon-Chisholm, TX 75032

PMG Paving, LLC
Attn: Paven Gentry
P.O. Box 2197
Forney, TX 75126

16. EXECUTION

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date of the last signature below.

CITY OF MCLENDON-CHISHOLM, TEXAS

By: _____

Bryan McNeal, Mayor

Date: _____

ATTEST:

Angela Jennings, City Secretary

PMG PAVING, LLC

By: _____

Paven Gentry, Representative

Date: _____

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, AWARDED REQUEST FOR PROPOSALS (RFP) 2026-01-05 TO PMG PAVING, LLC, FOR ASPHALT PAVING SERVICES AND CEMENT STABILIZATION ON SMITH ROAD, CONNIE LANE, AND LEAGUE ROAD; APPROVING THE EXECUTION OF THE AGREEMENT AND RELATED CONTRACT DOCUMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of McLendon-Chisholm, Texas, has determined that it is in the best interest of the City to award a contract for asphalt paving services and cement stabilization on Smith Rd, Connie Ln, and League Rd in accordance with RFP 2026-01-05; and

WHEREAS, the bid process was conducted in compliance with all applicable local and state purchasing statutes; and

WHEREAS, the City received a responsive and responsible proposal from PMG Paving, LLC consistent with the specifications outlined in RFP 2026-01-05, for a total project cost not to exceed Two Million One Hundred Ninety-Nine Thousand Four Hundred Seventy-Two Dollars and 00/100 (\$2,199,472.00).

WHEREAS, City Council finds that awarding the contract to PMG Paving, LLC in accordance with the terms and conditions of RFP 2026-01-05 is in the best interest of the City and its residents;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS, THAT:

SECTION 1. That City Council hereby awards RFP 2026-01-05 to PMG Paving, LLC, for asphalt paving services and cement stabilization on Smith Rd, Connie Ln, and League Rd in a total amount not to exceed \$2,199,472.00, consistent with the prices and terms submitted in RFP 2026-01-05.

SECTION 2. City Council hereby approves the execution of the Contract Agreement, together with all related contract documents, as presented.

SECTION 3. Should any section, clause, or provision of this Resolution be held invalid for any reason, the remaining portions shall not be affected and shall remain in full force and effect.

SECTION 4. This Resolution shall be cumulative of all provisions of Resolutions of the City except where the provisions of this Resolution are in direct conflict with the provisions of such Resolutions, in which event the conflicting provisions of such Resolutions are hereby repealed.

SECTION 5. It is hereby declared to be the intention of the City Council of the City of McLendon-Chisholm, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Resolution are severable, and if any phrase, clause, sentence, paragraph, or section of this Resolution should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Resolution, since the same would have been enacted by the City Council without incorporation in this Resolution of such unconstitutional phrases, clause, sentence, paragraph, or section.

SECTION 4. This Resolution shall be effective immediately upon its adoption.

DULY PASSED and approved by the City Council of the City of McLendon-Chisholm, Texas, on this the 13th day of January 2026.

CITY OF MCLENDON-CHISHOLM

Bryan McNeal, Mayor

ATTEST:

Angela Jennings, City Secretary

ESTIMATE



Prepared For

CITY OF McLENDON-CHISHOLM
1371 W FM 550
Rockwall, Tx 75032
(469) 668-3245

PMG PAVING, LLC

P.O. Box 2197
Forney, TX 75126
Phone: (469) 918-7423
Email: asphaltpave93@gmail.com
Web: www.pmgpaving.com

Estimate # 244
Date 01/06/2026

Description

Road work repair

Asphalt Road Reclamation with Cement Stabilization and 3 inch Asphalt Overlay.

Location:

Smith Road \$829,659.00
(From Klutts Rd to FM550 approximately 6,000LF x 22' width)

Connie Lane \$503,700.00
(From Smith Rd to city limit approximately 4,000LF x 20' width)

League Road \$866,113.00
(From SH205 to Edward's Rd approximately 6,890LF x 20' width)

Asphalt Pulverization

- Full depth reclamation of existing asphalt road materials with cement stabilization added at 35LB/SY.

Preparation

- Mark, blade and grade the existing road materials after pulverizing to reshape road.
- Compact the road materials to prepare for new asphalt overlay.

Asphalt installation

- Install 3” type D hot mix asphalt material with a specialized paving machine to ensure a smooth and solid surface.
 - Roll hot mix material to asphalt material specifications.
-

Traffic Control

Signage and cones will be up during construction.

Subtotal	\$2,199,472.00
Total	\$2,199,472.00

Notes:**Pricing:**

- Our pricing is determined based on the sqft and scope of work provided above. The quote includes all necessary expenses such as materials, trucking, labor, and fuel required to complete your project.

Payment:

- Agreement to start and complete one road project at a time. Payment shall be made per road in three equal draws. Each draw shall represent one- third (33.33%) of the contract value allocated to that road and shall be payable at commencement, mid-competition, and competition of each respective road.

- Agreement of 1/3 of payment draw once equipment is delivered and pulverizing starts. Second 1/3 payment draw once all asphalt reclamation is completed. Remaining 1/3 payment due upon completion of asphalt overlay.

Warranty:

PMG Paving warrants and guarantees the quality of materials and workmanship for a period of two year from the date of installation. Any such area determined to fall within this warranty parameters will be repaired according to industry standards. The repair will be patched or crack filled and could be visible. There is no warranty on pothole repair or asphalt repairs in parking lots with major cracking. This warranty does not include damage caused by gas or oil spills, dumpsters, sharp turning of tires, puddles on a surface with less than 2% slope per foot, or normal wear and tear. On occasion small puddles may occur for a short period of time after rain fall. Please note that grass and acts of nature are not covered under this warranty. Customers are responsible for preventing grass growth along the edges unless a separate maintenance contract has been arranged with PMG Paving. Additionally, we are not responsible for sub-grade work our company did not perform. Customers are responsible for providing site plans and geotechnical reports to PMG Paving before project start date. However, we are fully committed to standing behind our warranty and addressing any unforeseen circumstances that may arise in order to ensure the highest level of customer satisfaction and peace of mind.

By signing this document, the customer agrees to the services and conditions outlined in this document.

CITY OF McLENDON-CHISHOLM